# HOUSEHOLD GOODS TRANSPORTATION ACT OF 1980



## HEARING

BEFORE THE

## SUBCOMMITTEE ON SURFACE TRANSPORTATION

OF THE

## COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

OVERSIGHT OF THE HOUSEHOLD GOODS TRANSPORTATION ACT OF 1980

DECEMBER 10, 1982

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# HOUSEHOLD GOODS TRANSPORTATION ACT OF 1980

FRIDAY, DECEMBER 10, 1982

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 235, Russell Senate Office Building, Hon. John Danforth (chairman of the subcommittee) presiding.

Staff members assigned to this hearing: Karen Borlaug, professional staff member; and Will Ris, minority staff counsel.

## OPENING STATEMENT BY SENATOR DANFORTH

Senator DANFORTH. The subcommittee is meeting to hear testimony on the Household Goods Transportation Act of 1980, which is to provide price and service options and strengthen penalties for violations of consumer protection regulations. In addition, many of the reforms of the Motor Carrier Act of 1980 also apply to the household good carriers.

This committee is required by law to conduct annual oversight hearings on the Household Goods Transportation Act. At last year's hearing, we received testimony which indicated that the Household Goods Transportation Act had not been in effect long enough to determine conclusively its impacts on the industry and consumers.

Today, more than 2 years after its enactment, it is still too early to draw firm conclusions as to the act's effects, nevertheless, trends are discernible. I understand the overall effects to date have been positive, despite the current recession, although the industry is experiencing some difficulties as it continues to adjust to the new regulatory environment.

I look forward to hearing in more detail from the Government, industry, and consumer representatives scheduled to testify today about implementation of the act, and the effects of the act to date. The statement of each witness will be placed in the record in its entirety. You don't have to ask for it to be placed in the record, it will be placed in the record.

Therefore, I would very much appreciate it if the witnesses could limit their testimony to the times they have been told by staff that they will have. Otherwise, with such a long witness list, we will not be able to accommodate everybody. I assure those who have statements that their statements will be very carefully considered.

Senator Cannon has a statement for the record.
[The statement follows:]

OPENING STATEMENT BY SENATOR CANNON

I merely want to say that despite the many issues that will be raised today concerning the implementation of the Household Goods Moving Act, on balance I think this has been a most successful piece of legislation. I can make that statement based on one measurement that I can guarantee is accurate—constituent complaints about household moves. Before the Act, a week rarely went by when I wouldn't receive one or two complaints from constituents about a moving company—and my state has relatively few constituents.

Today I rarely receive complaints. I honestly believe that the household moving industry has improved its performance and its public image immensely during the past three years. Not everything is perfect, by a long shot. A little more traffic would help, to be sure. And as I know all too well, the relationships between van lines and agents could be a tad better. But I must say that the relationship between the industry and consumers is substantially improved, and I congratulate all of you here today for that fact.

Chairman Danforth, I have taken a special interest in this industry for several years. I have found both the movers and the consumer groups who work with them to be tough, but fair people to deal with. I hope you will continue the tradition of this Committee in keepting track of the one sector of the trucking industry that consumers deal with directly. That fact makes it both very interesting and very important.

Senator DANFORTH. Mr. Taylor, good to have you back.

## STATEMENT OF HON. REESE H. TAYLOR, JR., CHAIRMAN, INTERSTATE COMMERCE COMMISSION, ACCOMPANIED BY JAN ROSENAK, LEGISLATIVE COUNSEL, AND RAY ATHERTON, CHIEF, PROGRAMS BRANCH, OFFICE OF COMPLIANCE AND CONSUMER ASSISTANCE

Mr. TAYLOR. Thank you very much, Mr. Chairman. We are delighted to be here.

Good morning to you, and before we begin I would like to introduce the two people that I have brought with me today. On my left is Ray Atherton, Chief of the Programs Branch of our Office of Compliance and Consumer Assistance. On my right is Jan Rosenak, the Commission's legislative counsel.

We do have a complete statement, which I guess you will put in the record with the appendixes. In addition to that, there is a recent speech that I made to the American Movers Conference in San Diego, on October 7, that I would ask to have included in the record, without objection. If we could, we would also like to have an interim assessment of the interstate motor carrier household goods transportation industry staff report, which Mr. Atherton has prepared, included in the record.[1]

Thank you for the opportunity to appear here to present the views of the Commission with respect to the implementation and effects of the Household Goods Transportation Act. While it may still be too early to finally assess the impact of the act on carriers and shippers, we believe that, so far, the impact has been positive, and substantial progress has been made in terms of fulfilling the purposes of Congress in enacting this legislation.

My remarks today will: One, bring you up to date on the Commission's actions with respect to implementing the legislation; two,

[1] The appendixes and additional material referred to have been retained in the committee files.

discuss the impact of the act on shippers and the industry; and, three, comment on present trends and future developments in this industry and their possible impact on the industry's financial condition.

In enacting this legislation, Congress had a threefold purpose, first, the reduction of unnecessary regulations; second, the strengthening of consumer remedies and protections; and third, the establishment of maximum carrier flexibility in service of service and meeting the needs of shippers.

In accordance with the act, the Commission instituted a rulemaking and promulgated final rules in March of 1981. Upon challenge by certain carriers, the rules were stayed by the Court of Appeals for the Seventh Circuit until December 9, 1981, when the court upheld the rules and lifted the stay. The rules became effective on February 1 of this year.

In accordance with the congressional intent, regulations and paperwork required of carriers have been reduced, while individual shippers remain protected. We believe that our elimination of the required filing of various reports will relieve the industry of an annual burden of nearly 40,000 workhours.

With respect to strengthening consumer remedies and protections, the Commission adopted rules requiring that: First, improved, easy-to-read premove information be distributed to shippers; second, shippers be informed of the existence and use of claims and dispute resolution programs; third, carriers establish customer complaint and inquiry handling programs; fourth, shippers be permitted to observe any weighing of a shipment; fifth, shippers be notified of impending service delays; and sixth, carriers continue to permit shippers to obtain delivery of a shipment upon payment of 110 percent of the estimated charges when the shipment moves on a nonbinding estimate, and have to at least 30 days to pay any balance due.

Finally, the objective calling for carrier flexibility and pricing has been met, in our view, and a variety of new price and service options are presently available.

## IMPACT OF THE ACT ON INDUSTRY AND SHIPPERS

Carriers have published tariff items providing for discounts applicable to intercity transportation charges, based on such factors as movement to and from certain geographical areas, the number of shipments transported, or the aggregate weight of shipments tendered by a shipper within a given time frame. Further, the offering of guaranteed service dates and a predetermined amount of compensation to the shipper in the event of delayed service is becoming a common practice.

All the major carriers are offering full value liability protection. This is an added option, offered at an additional charge. Prior to offering this option, the liability of a carrier was generally limited to a maximum of the actual cash value of an article as of the date the carrier received it. Now, under full value liability protection, a shipper has the option of being compensated on the basis of replacement cost.

The Commission has two primary sources of information which provide a basis for assessing shipper reaction to the innovations taking place in the transportation of household goods. These are shipper complaints and the moving service questionnaire, which was developed by the Commission for completion by shippers subsequent to their moves to reflect their appraisal of the carrier's performance.

It is clear that the frequency of shipper complaints has declined considerably since passage of the act. Our data indicate that the number of complaints received during 1982 represents a significant reduction from prior years. We expect that complaints for this year will be only about 60 percent of the number of complaints received in 1981. On a fiscal year basis, 6,529 complaints were received during fiscal year 1982, compared to 11,741 during fiscal year 1981. Complaints in fiscal year 1981 were substantially less than in the prior fiscal year.

This dramatic decrease in the number of complaints against household goods carriers is the result of a number of factors, including the following: carriers generally are providing a better quality of service; there has been a reduction in tonnage as a result of the economy; under the new regulations, moving companies are required to advise shippers of complaint handling procedures and telephone numbers to be used in the event of a complaint or inquiry; and

Lastly, the Commission's OCP-100 publication does encourage shippers to contact carriers first with any complaints and to contact the Commission only if they fail to receive satisfaction.

All the major carriers and many small carriers have given notice of their participation in dispute resolution programs utilizing arbitration. For example, the Movers 'and Warehousemen's Association of America, and the American Movers Conference have Commission-approved programs which are administered by the American Arbitration Association.

Presently, these arbitration plans have not been in effect long enough to permit an accurate evaluation of their effect, but we believe that implementation of acceptable settlement dispute programs will result in fewer shipper complaints and less necessity for Commission involvement.

As to present trends and future developments, it is perhaps too soon after implementation of the act to draw final conclusions, but it is possible to make some observations about current trends. For example, with the more flexible entry provisions of the Motor Carrier Act of 1980, there has been a broadening of authority by carriers already certificated, but to date we have not seen a great influx of new carriers.

This could be explained in part by factors such as the nature of the industry, the need for specialized equipment and trained labor, the significance of an established agency system, and the capital investment required to begin a new operation. These factors tend to restrain the likelihood of an immediate influx of new entrants into the industry.

However, there are hundreds of companies that currently serve as agents to certificated carriers, who have the necessary experience and equipment, who could seek authority to operate indepen-

dently, perhaps in a regional rather than a national market. In addition, an upturn in the economy could encourage new entry into the industry.

We are also witnessing what appears to be the development of a significant trend toward the use of contracts by household goods moving companies. As a marketing tactic, contract carriage appears advantageous in certain instances, particularly insofar as innovative pricing strategies are concerned. Consequently, it seems likely that the trend toward contracting will become a permanent practice.

When the act was passed, many felt that binding estimates would become the rule rather than the exception. So far this has not been the case. Only one of the major carriers has chosen to rely extensively on the use of binding estimates. Of the roughly 50,000 shipments transported during 1981 on binding estimates, over 47,000 were transported by that carrier, and our review of the data indicates that this is the only major carrier that has received increased revenue from binding estimates. All of the others have received substantially less revenue as a result of their use of binding estimates.

Current information suggests that the use of binding estimates is expanding, however, and that perhaps as many as 20 percent of all shipments for individuals will be moved under binding estimates this year.

You may be aware that the ICC has initiated an investigation into potential changes in the relationship between moving companies and their agents. The proceeding grew out of a policy adopted by a carrier under which that carrier would no longer pool shipments with companies which have their own operating authority. Since our review of this policy is ongoing, further comment is really not appropriate at this time.

I would also like to mention that the Commission is investigating complaints we have received that move-it-yourself companies are providing unauthorized full scale household goods moving services. I was not personally aware of the problems in this area, but we have been looking into them since August.

Since the bell has gone, Mr. Chairman, I will abide by instructions and cease at this point from saying anything further. There are some financial data in our summary, which I think indicate that at least the household goods industry, while suffering some from the economic decline, has not suffered anywhere near to the same extent that the trucking industry has. Those figures are there, including some recent ones that have just come out this week, which were put together by our Bureau of Accounts.

I will make myself available now for any questions that you might have.

Senator DANFORTH. Thank you very much, Mr. Chairman.

One of the concerns that has been expressed, as I understand it by some representatives of this industry, has to do with pricing practices, discounting, and special programs that are provided for large volume shippers. There is some question as to whether these pricing practices are discriminatory against small shippers. Is that a problem?

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Mr. TAYLOR. Mr. Chairman, we have heard all kinds of allegations for the past year about what is going on in the pricing area, that certain practices are predatory, that they may be discriminatory, that agents may be adversely affected by some of the price cutting activity that has gone forward, and that owner/operators are not being hurt as much as some of the agents are.

What we have done, finally, is to institute a proceeding which we have designated ex parte No. MC-166, and we have asked for comments. The household goods industry is to be included in that proceeding, so that we can really get a better handle on what is going on.

I must say that we are not, as a result of this proceeding, going to throw out any lifesavers and build any minimum rate floors. We think that is contrary to the purposes of the act and the new revised transportation policy. But, to the extent that we find anything that is illegal going on, we certainly are prepared to address it.

There is also a possibility, as I indicated on the House side, that we may go out in the field and have some hearings on this, to make ourselves more readily available to people who perhaps can't come to Washington and tell us what is going on, particularly if they are small agents.

Senator DANFORTH. Let's suppose that it is going on, and let's suppose that you believe that it is a bad practice, is it illegal?

Mr. TAYLOR. I think that if you have a clear case of discrimination it would be. The prohibitions against discrimination and predatory pricing were left in the 1980 act, they were not touched, they have been there since 1935. There are some new purposes in the Motor Carrier Act to be sure, and there is an argument that there is no way that motor carrier pricing can be really predatory because by the time you have control of the market and raised your prices with a new entry, that just couldn't happen. Of course, some of the industry people have said, "Why do you have to destroy a lot of existing companies first to prove that point?" It is really a difficult and touchy area for us in that respect.

I think discrimination is a little bit easier to deal with, but the problem is that we have not really gotten any hard evidence as yet. I think what we have to do is to go out and get the facts, and that is what this proceeding is intended to do. Then, hopefully, we will be able to make some evaluations of them.

To the extent that we find practices going on that we think are illegal, we will try to address them. If we find that we are in a no man's land or a marsh with the whole thing, we will certainly come back to Congress and suggest that something ought to be done.

Senator DANFORTH. Part of your testimony has to do with the paperwork burden that some carriers complained of. You feel that there has been significant progress in the reduction of this burden.

Do you have some method of keeping contact with the people in the industry to receive their complaints or their view on what is necessary and what is not necessary, what is burdensome and how it can be relieved?

Mr. TAYLOR. Mr. Chairman, one of the reasons I wanted the speech included is because the first portion of it deals exactly with that problem.

I think, in times past, the Commission and the industry have been somewhat at loggerheads with each other. They have not really cooperated as they should have. I have endeavored, since I have been down there, to have a complete open-door policy with the industry, to encourage them not only to come to my office and discuss their problems, but we even set up an arrangement with our Office of Compliance and Consumer Assistance for them to come in and discuss things on a regular basis there.

We have done that in connection with the new rule which only became effective in February of this year. We decided there probably are some things that ought to be done with it. That was really the first real cut at doing something about some of the paperwork burden.

Some of the industry people feel, as I am sure you are going to hear, that we have not done near enough. I am the first to admit that there is a lot more to do, and hopefully we are going to work with the industry in the accomplishment of that objective.

They have been very good in responding to our invitation to come forward and sit down to discuss with me and our staff problems that they have. We are going to continue, at least as long as I am there, to have that open-door policy because I think that is the best way to deal with a situation that did get very antagonistic in times past.

Senator DANFORTH. I would think there would be times when the representatives of the industry would say, "Here is form such and such, and there are so many specific examples of onerous paperwork that maybe we shouldn't be coming in to talk to the chairman about it." Is there some sort of ongoing process to identify what the burdensome paperwork is and to remove it?

Mr. TAYLOR. When I first got there, we initiated a program with all the bureau and office heads to try and respond, so that we could get rid of whatever we felt would be onerous and burdensome.

We have uncovered an awful lot of that, and some of that is set forth in the Council of Independent Regulatory Agencies report, in our portion thereof, as to what we did, not only in the household goods area but across the board. I think we identified some 175 regulations that really ought to go, and 75 or 80 of them which ought to require some kind of immediate attention. We had taken care of about 40 of them as of September.

Mr. Atherton is with me, and he is our OCCA office. He is probably more knowledgeable in the household goods area than anybody else on our staff, and that is why I brought him today. I personally asked Warren McFarland, who is the Director of our Office of Compliance and Consumer Assistance, to set that arrangement up and to have continuing meetings.

I think, perhaps, to elaborate a little bit on the specifics of what has been done already and what is anticipated in the future, maybe Mr. Atherton could comment.

Senator DANFORTH. Good.

Mr. ATHERTON. Mr. Chairman, we do have a continuing dialog with representatives of the industry. We hear their complaints, and their concerns more than complaints.

We have not as yet had enough experience with the whole scope of these regulations to begin to identify those areas where we can greatly reduce the paperwork. We are working toward that. We have a continuing program to reduce regulation and paperwork. Just this morning, we are working on some of the bus regulations, to get them out of the books as soon as we can. The same is happening here.

We have just had one season with these new regulations in effect. I know the industry is talking of petitioning for a review of the regulations, and I am sure that by this time next year that there will be a considerable revision of many of the requirements.

Mr. TAYLOR. We have eliminated a lot of the reporting requirements for class III carriers. Further, there was a thought that perhaps some tinkering before the summer season was not the best move, and that we ought to have some more extensive discussions after the summer moving season was over.

It is an ongoing program, I can assure you, Mr. Chairman.

Senator DANFORTH. The ongoing program and the openness that you say that the Commission has toward carriers, does that apply to consumers as well?

Mr. TAYLOR. Absolutely.

Senator DANFORTH. If consumers or consumer groups feel that something has gone heywire in the industry, they have a place to go?

Mr. TAYLOR. Really, we are the only place that shippers can go, because that is a one-time situation for an awful lot of people. They don't have anyone to speak up for them on a day-to-day basis, and they don't have lawyers. That is the one thing we found in Florida with what has happened down there. With household good moves, really, if shippers don't have any place to go, this is a serious problem. So we have tried to be as responsive to them as we know how to be.

Senator DANFORTH. Thank you very much.

Mr. TAYLOR. Thank you, Mr. Chairman.

Senator DANFORTH. The next witness is Maj. Gen. John D. Bruen, U.S. Army, Commander, Military Traffic Management Command, Department of Defense.

Mr. Taylor, can I ask you, are you going to stay in the room for the hearings?

Mr. TAYLOR. I thought I would try to stay through two or three witnesses. I can't stay all morning, Mr. Chairman.

Senator DANFORTH. Will somebody from the Commission be here?

Mr. TAYLOR. Absolutely. We are going to have two or three people.

If something comes up in this testimony that you would like me to try and respond to, I will be happy to, as long as I am here, or while other people are here.

Senator DANFORTH. Can I just ask you one question about the Defense Department. Do you believe that the Defense Department is exempt from requirements of the act?

Mr. TAYLOR. I would like to answer this question very carefully.

We had quite a controversy between the Department of Defense and the Commission concerning the applicability of our regulations. Actually, there was a controversy as to whether the Commission's new reweigh rules actually apply to Government traffic or not.

The present rules allow a household goods shipper to request reweighing of the shipment before accepting delivery, but direct that the actual charges collected should be based on the reweighed tonnage, even if it is higher than the earlier weighing. Department of Defense maintains that procurement regulations provide that the lower of the two weights must be used to compute the charges due.

Because of this apparent conflict in the agencies' rules, certain household goods carriers sought judicial relief to prevent the enforcement of the DOD regulations.

On our own motion, the Commission issued an interpretive statement in ex parte No. MC-19 Sub No. 36, finding that our revised regulations do not supersede or implicitly repeal those of other Federal agencies. This conclusion is consistent with the Commission's limited jurisdiction over Government traffic. The net effect of that, of course, was to leave the DOD rule in effect.

The Commission has filed a motion seeking dismissal of the civil action as to our agency. Judicial review of the Commission's decision has been sought and our brief will be filed in December.

I think that this is where we are statuswise. We allowed their regulation to remain in effect. We certainly have an interest, but to try and give you a dispositive yes or no answer at this point would not be a very wise move on our part.

Senator DANFORTH. It sounded like no to me.

Mr. TAYLOR. Can I leave it like that.

[The statement follows:]

STATEMENT OF HON. REESE H. TAYLOR, JR., CHAIRMAN, INTERSTATE COMMERCE COMMISSION

Mr. Chairman and members of the subcommittee, thank you for the opportunity to appear here today to present the views of the Interstate Commerce Commission with respect to the implementation and effects of the Household Goods Transportation Act of 1980. While it may still be too early to finally assess the impact of the Act on carriers and shippers, we believe that, so far, the impact has been positive, and that substantial progress has been made in terms of fulfilling the purpose of Congress in enacting this legislation. My remarks today will concentrate on three areas: First, I will bring you up to date on the Commission's actions with respect to implementing the legislation. Second, I will discuss the impact of the Act on shippers and the industry as we see it today. And, third, I will comment on present trends and future developments in this industry and their possible impact on the industry's financial condition.

ICC IMPLEMENTATION

In enacting this legislation, Congress had a threefold purpose, as set forth in the Act's Declaration of Policy: (1) reduction of unnecessary regulation; (2) strengthening of consumer remedies and protections; and (3) establishment of maximum carrier flexibility in pricing of service and meeting the needs of shippers. In accordance with the purpose of the Act and pursuant to the specific directive of Section 6, the Commission instituted a rulemaking, Ex Parte No. MC-19 (Sub-No. 36), Practices of Motor Common Carriers of Household Goods (Revision of Operational Regulations), to review and revise existing household goods regulations. Comments were received, modifications made, and final rules were served on March 11, 1981, to become effec-

tive June 9, 1981. However, upon challenge by certain carriers, the rules were stayed by the Court of Appeals for the Seventh Circuit until December 9, 1981, when the Court issued its decision upholding the rules and lifting the stay.[1] The rules were then reinstated by the Commission and became effective on February 1, 1982.

I will now briefly discuss the rules implementing the Act and how they, in conjunction with the Act itself, have led to increased opportunities for both carriers and shippers.

In accordance with the Act, regulations and paperwork requird of carriers have been reduced while individual shippers remain protected. As an example, most annual performance reports and all notices of agency agreements have been eliminated, resulting in a substantial work-hour savings to the industry. Also eliminated was the requirement for filing quarterly reports detailing instances where actual charges for a shipment were either more than 10 percent above or below the initial estimate; again, substantial savings should result. In fact, we believe that the elimination of these various reports will relieve the industry of an annual burden of nearly 40,000 work-hours, without lessening individual shipper protections.

Also, additional carrier work-hour savings have been realized by the Commission's elimination of requirements that (1) carriers obtain signed receipts from shippers stating that they have received certain pre-move information; and (2) more than one weight ticket be completed when both the tare and gross weighings are conducted on the same scale. It should be stressed that the requirements eliminated are those which we believe will reduce paperwork burdens without jeopardizing consumer protections.

With respect to the second goal of Congress, strengthening consumer remedies and protections, the Commission adopted rules requiring that: (1) improved, easy-to-read pre-move information be distributed to inform shippers of their rights and responsibilities; (2) shippers be fully and accurately informed of the existence and use of claims dispute resolution programs; (3) all carriers establish specific customer complaint and inquiry handling programs; (4) shippers be permitted to observe any weighing of a shipment; (5) shippers be notified of impending service delays; and (6) carriers continue to permit shippers to obtain delivery of a shipment upon payment of 110 percent of the estimated charges when the shipment moves on a non-binding estimate, and to have at least 30 days to pay any balance due.

Finally, the third legislative objective, calling for carrier flexibility in pricing of service, has been met, and a variety of new price and service options are presently available in the marketplace. I will discuss this pricing flexibility further in the next portion of my statement relating to the impact of the Act on the industry.

### IMPACT OF ACT ON THE INDUSTRY

Carriers have published tariff items providing for discounts applicable to intercity transportation charges, based on such factors as movement to and from certain geographical areas, the number of shipments transported, or the aggregate weight of shipments tendered by a shipper within a given time frame.

Further, the offering of guaranteed service dates and a pre-determined amount of compensation to the shipper in the event of delayed service is becoming a common practice. Generally, carriers who offer such guarantees provide for compensation at the rate of $100 to $125 for each day a shipment is delayed in delivery or pickup.

All of the major carriers are offering what is generally referred to as full value liability protection. This is an added option, offered at an additional charge, which differs from the manner in which carriers customarily assume liability for loss and damage. Prior to offering this option, the liability of a carrier was generally limited, with respect to each article in a shipment, to a maximum of the actual cash value of each article as of the date the carrier received it for transportation. Now, under full value liability protection, a shipper has the option of being compensated on the basis of replacement cost, with the result that, if this option is selected, the shipper will be eligible to receive either a new piece of furniture or be paid an amount sufficient to purchase a new piece of furniture to replace the one that was destroyed.

### ASSESSMENT OF SHIPPER REACTION TO THE EXPANDED PRICE AND SERVICE OPTIONS BEING OFFERED BY CARRIERS

The Commission has two primary sources of information which provide a basis for assessing shipper reaction to the innovations taking place in the transportation of

[1] *North American Van Lines, Inc.* v. *Interstate Commerce Commission*, 666 F. 2d 1087 (1981).

household goods. These are: (1) shipper complaints; and (2) the Moving Service Questionnaire, which was developed by the Commission for completion by shippers subsequent to their moves to reflect their appraisal of the carrier's performance.

Based on shipper complaints, it is clear that the frequency of such complaints has declined considerably since passage of the Act. Our data indicate that the number of complaints received durig 1982 represents a significant reduction from prior years. When final figures are in for this year, we expect that complaints will be only about 60 percent of the number of complaints received in 1981. On a fiscal year basis, 6,529 complaints were received durig Fiscal year 1982, compared to 11,741 during FY 1981. And complaints in FY 1981 were substantially less than in the prior fiscal year. This dramatic decrease in the number of complaints against household goods carriers is the result of a number of factors:

Analysis of the complaints on a carrier-by-carrier basis suggests that carriers generally are providing a better quality of service, reflecting, at least in part, the Congressional goal of increased service and price options.

The reduction in tonnage as a result of the declining economy since 1979 has made it easier for household goods carriers to meet service commitments.

Under the new regulations, which became effective February 1, 1982, moving companies are required to advise shippers of complaint handling procedures and to provide telephone numbers to be used in the event of a complaint or inquiry.

The Commission's OCP-100 publication, "Your Rights and Responsibilities When You Move," encourages shippers to contact their carrier first with any complaints, and to contact the Commission only if they fail to receive satisfaction from their carrier.

The Commission discontinued providing toll-free telephone service at the end of 1981.

Results from the Mcving Service Questionnaire [2] received by the Commission during the first ten months of 1982 provide the other basis on which to appraise the services being provided by the industry and the shippers' reactions to those services. Data from the questionnaire reflect a shipper preference for binding estimates. The possibility that a binding estimate may result in higher charges than would be experienced otherwise (although our experience to date reflects the opposite to be true) is apparently overshadowed by price certainty.

All of the major carriers and many small carriers have given notice of their participation in dispute resolution programs utilizing arbitration. For example, the Movers' and Warehousmen's Association of America, Inc. and the American Movers Conference have Commission-approved programs which are administered by the American Arbitration Association—an independent nongovernmental organization. Presently, these arbitration plans have not been in effect long enough to permit an accurate evaluation of their effect, but we believe that implementation of acceptable settlement dispute programs will result in fewer shipper complaints and less necessity for Commission involvement.

### PRESENT TRENDS AND FUTURE DEVELOPMENTS

As I mentioned earlier, it is perhaps too soon after implementation of the Household Goods Act to draw final conclusions, but it is possible to make some observations about current trends. For example, with the more flexible entry provisions of the Motor Carrier Act of 1980,[3] there has been a broadening of authority by carriers already certificated, but to date we have not seen a great influx of new carriers.

This could be explained in part by factors such as the nature of the industry, the need for specialized equipment and trained labor, the significance of an established agency system, and the capital investment required to begin a new operation. These factors tend to restrain the likelihood of an immediate influx of new entrants into the industry. However, there are hundreds of companies that currently serve as agents to certificated carriers and have the necessary experience and equipment and could seek authority to operate independently perhaps in a regional rather than a national market. In addition, an upturn in the economy could encourage new entry into the industry.

Presently, we are also witnessing what appears to be the development of a significant trend toward the use of contracts by household goods moving companies. As a marketing tactic, contract carriage appears advantageous in certain instances, par-

[2] A copy of the questionnaire, along with the tabulated results, is attached as appendix 1.

[3] The Motor Carrier Act of 1980 substantially eased entry for property motor carriers and the Household Goods Transportation Act of 1980 further eased entry for carriers transporting household goods for the Department of Defense.

ticularly insofar as innovative pricing strategies are concerned. Consequently, it seems likely that the trend toward contracting will become a permanent practice.

At the time the Household Goods Transportation Act was passed, many felt that binding estimates would become the rule rather than the exception. So far, this has not been the case. Only one of the major carriers has chosen to rely extensively on the use of binding estimates. Of the roughly 50,000 shipments transported during 1981 on binding estimates, over 47,000 were transported by that carrier, and our review of the data indicates that it is the only major carrier that has received increased revenue from binding estimates. All the others have received substantially less revenue as a result of their use of binding estimates.

We are not certain at this point whether the single carrier's revenue increase is a result of that company's commitment to the use of binding estimates, or whether other factors may be responsible. In any event, current information suggests that the use of binding estimates is expanding, and that perhaps as many as 20 percent of all shipments for individuals will be moved under binding estimates this year. Experience with the increased use of this practice should provide a more accurate picture of the industry's success or failure with binding estimates and the extent to which the practice will become a permanent fixture in the industry.

One other item should also be mentioned, since it involves a matter on the Commission's agenda. You may be aware that the ICC has initiated an investigation into potential changes in the relationship between moving companies and their agents. The proceeding grew out of a policy adopted by a carrier under which that carrier would no longer pool shipments with companies which have their own operating authority. Since our review of this policy is ongoing, further comment is not appropriate at this time. However, I will keep you informed of subsequent developments and the ultimate outcome in this proceeding.

Before concluding my remarks, I would like to comment briefly on the financial condition of the industry.

Between 1975 and 1980, the household goods market was expanding at a rate estimated to be between 5 and 8 percent annually. During the second quarter of 1980, the expansion came to an end, and the tonnage for that quarter declined below the tonnage transported during the second quarter of 1979. The decline continued throughout 1980, and the aggregate tonnage for the industry for that year appears to have been about 6 percent below the tonnage in 1979. Review of the operating and financial statistics of nine major carriers, which in the aggregate generated 48 percent of the total estimated revenues of the industry in 1981, discloses that the majority of those carriers continued to experience a decrease in tonnage in 1981, but at a much lower rate than in 1980. Taking into consideration those carriers which had a tonnage increase in 1981, the aggregate tonnage for the nine carriers increased approximately one percent in 1981 compared to 1980.

Revenue in relation to tons transported has increased consistently for the past four years, due primarily to a series of rate increases. From 1978 through 1981, the average revenue per ton transported by the nine carriers increased from $350.51 to $489.04 or 39.52 percent. During the same period, the Consumer Price Index increased from 195.4 to 272.4 or 39.41 percent.

This suggests that the national household goods market has declined when measured in tonnage since 1979, but the decline appears to have slowed and possibly bottomed out. When measured in dollars, the market has increased, but on a carrier-by-carrier basis, the amount of the increase varies.

The market for household goods movements is unquestionably sensitive to variations in the home mortgage interest rate and the number of new housing starts per year. Even though the moving industry does not appear to be in serious financial difficulty due to the present state of the economy, they may well be many small carriers and agents throughout the industry which are being adversely affected by economic conditions within the limited areas they serve.

A report by the Commission's Bureau of Accounts, showing revenue and income data for the Nation's largest interstate moving companies, is attached as Appendix 2. The report includes quarterly and twelve-month period earnings for these carriers. It shows that, compared to the largest freight carriers (see Appendix 3) the moving companies experienced better operating results. For example, net carrier operating income decreased 39.4 percent for the trucking companies during the second quarter of 1982 viz-a-viz the second quarter of 1981, while such income decreased only 7.4 percent for moving companies during that period. For the twelve months ending June 30, 1982, viz-a-viz the twelve-month period ending June 30, 1981, net carrier operating income decreased 56 percent for trucking companies and 5.5 percent for moving companies. Moreover, for this same one-year period, return one-year period, return on equity decreased from 14.1 percent to 5.39 percent for the

trucking companies, whereas it decreased less than 2 percent (from 16.6 percent to 15.2 percent) for moving companies. Figures released this week (attached as Appendix 4) for the Nation's largest moving companies show an increase in earnings from operations during the third quarter of 1982, compared to the third quarter of 1981. Comparable third quarter data is not yet available for trucking companies.

The Commission will continue its effort to implement the Household Goods Transportation Act in accordance with Congressional intent. At present, the Act appears to be working well, to the benefit of both shippers and carriers. We will, of course, keep you apprised of further developments and will recommend additional legislative changes as they appear warranted.

This concludes my prepared remarks, and now I will be happy to answer any questions you may have.

Commissioner Sterrett was absent and did not participate.

[The following information was subsequently received for the record:]

DEPARTMENT OF DEFENSE
AND INTERSTATE COMMERCE COMMISSION,
*December 22, 1982.*

Hon. JOHN C. DANFORTH,
*Chairman, Subcommittee on Surface Transportation,*
*U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: As indicated by the testimony presented at your Subcommittee's oversight hearing on December 10, 1982, the Household Goods Transportation Act of 1980 has generally had a positive impact on carriers and shippers.

During that hearing, however, questions were raised with regard to the differing reweigh rules applied by the Commission and the Department of Defense. The Commission has addressed this issue in an Interpretive Statement, served June 17, 1982, and concluded that, despite the divergent rules, no real conflict exists, since the Commission's revised regulations do not apply to movements of government household goods for the Department of Defense or other Federal agencies. The basis for this finding and the rationale for the reweigh rule adopted by the Department of Defense are explained in detail in the attached joint memorandum.

Since your household goods hearing, staff of our two agencies have met to discuss this matter further and to determine whether changes might be made in the reweigh rules of either agency. At this time, we concluded that the differing rules are justified for the reasons set forth in our memorandum. However, we will continue to evaluate the matter and to reach an accommodation if possible. We will, of course, keep you informed.

If you need any additional information, please let us know.

REESE H. TAYLOR, Jr.,
*Chairman, Interstate Commerce Commission.*

JOHN D. BRUEN,
*Major General, U.S.A.,*
*Commander, Military Traffic Management Command.*

[Joint ICC-DOD Memorandum]

APPLICABILITY OF COMMISSION OPERATIONAL HOUSEHOLD GOODS REGULATIONS TO GOVERNMENT TRAFFIC

Background—Prior to the enactment of the Household Goods Transportation Act of 1980, the Interstate Commerce Commission regulation which governed the reweighing of household goods shipments, 49 C.F.R. 1056.6(d), provided that, upon request of a shipper or its representative, the carrier shall reweigh a shipment, and "the lower of the two net scale weights shall be used" to determined the applicable charges. At that time, the Department of Defense reweigh regulation paralleled the pre-Act ICC rule. That is: the charges must be based on the lower of the two weights.

Upon the enactment of the Act and pursuant to the directive of Section 6, the Commission instituted a rulemaking, Ex Parte No. MC-19 (Sub-No. 36), "Practices of Motor Common Carriers of Household Goods (Revision of Operational Regulations)" to review and revise existing household goods regulations. The rules became

effective on February 1, 1982.[1] One provision of the new regulations, 49 C.F.R. 1056.7(c), permits a household goods shipper to request reweighing of a shipment before accepting delivery, but directs that the charges collected must be based on the reweighed tonnage (even if that tonnage is higher than the earlier reweighing). Under the new regulation, therefore, a carrier may or may not benefit from the reweighing, depending upon whether a higher tonnage was recorded at the second weighing.

DOD continues to enforce its reweigh regulations which now differ from the Commission's. Certain carriers sought from DOD an acknowledgement that it must conform to the new ICC reweigh rule. These carriers brought suit against both agencies in district court. *Allied Van Lines, et al.* v. *Dept. of Defense, et al.*, Civ. No. 82C-3384, U.S. D.C., N.D. Ill. Petitioners seek to prevent the enforcement of the DOD regulations or, in the alternative, to enjoin the ICC's enforcement of its new reweigh rules on government household goods shipments.

On its own motion, the Commission addressed this alleged controversy between the agencies' rules. On June 14, 1982, the Commission found that no real conflict existed, Ex Parte No. MC-19 (Sub-No. 36), "Interpretive Statement, Applicability of Revised Operational Household Goods Regulations to Government Traffic." The Commission stated that its revised regulations [49 C.F.R. 1056.7(c)] do not and should not apply to movements of government household goods for DOD or any other federal agency. In so finding, the Commission also noted the limited nature of its jurisdiction over government traffic.

### THE ACT MANDATED A CHANGE IN COMMISSION REWEIGH RULES.

Section 6 of the Act amended section 11109 of title 49, United States Code, to read in part:

"The Commission shall issue regulations that provide motor carriers providing transportation of household goods subject to the jurisdiction of the Commission under subchapter II of Chapter 105 of this title with the *maximum possible flexibility in weighing shipments,* consistent with assurance to the shipper of accurate weighing practices. The Commission *shall not prohibit such carriers* from backweighing shipments or *from basing their charges on the reweigh weights if the shipper observes both the tare and gross weighings* (or, prior to such weighings, waives in writing the opportunity to observe such weighings) and such weighings are performed on the same scale." (Emphasis added).

By the terms of the statute, the Commission's rules must allow the carriers the maximum possible flexibility in weighing their shipments, subject to shipper assurance of accuracy. Likewise, the Commission's regulations may not prohibit backweighing or basing charges on reweighed tonnage, again subject to shipper protections. Thus, section 6 of the Act required a change in the Commission's reweigh rules. In Ex Parte No. MC-19 (Sub-No. 36), for example, the Commission found that the Act does not give the agency discretion to impose conditions on the use of backweighing shipments. By the terms of the statute, however, these directives apply only to the Commission.

The rationale underlying the statutory mandate, as we understand it, was to avoid frivolous requests for reweighs because of the burden such requests could impose on household goods carriers. Now, under the statute, as implemented by the ICC reweigh rule, shippers still have the right to demand a reweigh, but, if they do, the charges are based on that reweigh weight.

### SECTION 6 OF THE ACT APPLIES TO OTHER AGENCIES' RULES TO THE MAXIMUM EXTENT FEASIBLE

By inclusion of the following language in Section 6(b)(3), Congress directed other federal agencies to implement the policies of Section 6 whenever feasible.

"To the maximum extent feasible, the provisions of this section, including the amendments made by this section, shall apply to rules and regulations pertaining to transportation of household goods for the United States Government issued by departments, agencies, and instrumentalities of the United States (other than the Interstate Commerce Commission), including rules and regulations established for the distribution of such traffic, to the same extent as such provisions apply to rules and regulations issued by the Interstate Commerce Commission."

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[1] The final rules were served on March 11, 1981, to become effective June 9, 1981. Upon challenge, the U.S. Court of Appeals for the Seventh Circuit stayed the rules until December 9, 1981, when the Court issued its decision upholding the rules and lifting the stay. *North American Van Lines, Inc.* v. *Interstate Commerce Commission*, 666 F.2d 1087 (7th Cir. 1981).

The legislative history of the statute directs that any implementation by other agencies is to be done through "applicable proceedings . . . to be instituted and carried out by the respective entities, such as the Department of Defense, or any other department, agency or instrumentality having regulations that pertain to the transportation of household goods for the United States Government." H. Rep. No. 96–1372. "Household Goods Transportation Act of 1980," 96th Cong. 2d. Sess. 12. It appears that the implementation of the policies of Section 6, and the extent of that implementation, are within the purview of these other government entities. There is no Congressional intent that the Commission's revised regulations would supersede or implicitly repeal the existing procurement regulations of other federal agencies.

THE COMMISSION HAS LIMITED JURISDICTION OVER GOVERNMENT HOUSEHOLD GOODS TRAFFIC

As indicated above, the Commission has limited jurisdiction over government traffic under 49 U.S.C. 10721 [formerly 49 U.S.C. 22, made applicable to motor carriers by former 49 U.S.C. 317(b)]. There is no indication that Congress, in enacting the Household Goods Transportation Act, intended to expand that jurisdiction, except in one area not relevant here—predatory pricing. The limited nature of the Commission's jurisdiction over government traffic was explained in "Transportation of Government Traffic," 129 M.C.C. 623, 637 N. 11 (1978):

"Where traffic moves pursuant to section 22, (except for the required filing with this Commission of all section 22 quotations or tenders which the carrier submits to an agency of the Federal Government) we have no regulatory authority over such rates."

The Commission has also held that section 10721 quotations "need not conform to the Commission's rules regulating tariff rates." "Rocky Mountain Carriers—Agreement," 314 I.C.C. 279 (281) (1961). A court of appeals has held that "the government is free to contract for [household goods] declared value limitations without [ICC] approval." *Howe* v. *Allied Van Lines,* 622 F.2d 1147, 1159 (3d Cir. 1980) cert. denied (149 U.S. 992 (1980).

The Commission does have jurisdiction where the government (not a carrier or private shipper) alleges unreasonable practices relating to a section 10721 movement. See *Dept. of Energy* v. *B&O R. Co.,* 364 I.C.C. 951, 959 (1981). It should also be noted that rate discrimination or preferential treatment in favor of the government is permissible. See *Great Northern Ry. Co.* v. *United States,* 312 F.2d 901, 903 (Ct. Cl. 1962).

THE ACT DID NOT ENLARGE COMMISSION JURISDICTION INTO THIS AREA

The Act amended Section 10721(b)(1) by adding a provision that "any rates for the transportation of household goods for the United States Government shall not be predatory." It also specified that section 10721(b) does not limit the Commission's authority to suspend and investigate proposed rates on government household goods where predatory practices are alleged. The legislative history of the Act makes clear the limited nature of this authority: "The Committee intends that this provision shall not authorize the Commission to review rates for government traffic on any other basis." H. Rep. No. 96–1372, supra, at 19.

Except for the predatory pricing area, the Act does not extend the Commission's limited jurisdiction over government household goods traffic. Therefore, a fundamental principle of adminstrative law applies: a regulation issued by an administrative agency "cannot exceed the specific statutory authority granted to it by Congress." *Atchison T & S. F. Fy. Co.* v. *I.C.C.;* 607 F.2d 1199, 1203 (7th Cir. 1979). Outside the limited realm of Commission jurisdiction, its regulations cannot apply to government traffic of household goods. Further, when two agencies such as the Commission and DOD are involved, the proper jurisdictional issue is "the power of that particular agency to administer and enforce the law." *Stop H–3 Ass'n* v. *Coleman,* 533 F.2d 434, 441 n. 13 (9th Cir. 1976), cert. denied 429 U.S. 999 (1976) (emphasis added). The Commission lacks authority to regulate outside its above-described jurisdiction. Finally, Section 6 of the Act directs the Commission to provide regulations for motor common carriers providing transportation of household goods subject to the jurisdiction of the Commission under subchapter II of chapter 105 title 49. Thus, the Act cannot be construed to have enlarged the Commission's jurisdiction.

CONCLUSION

Accordingly, it appears that section 6 of the Act mandated a change in the Commission's reweigh rules; that the Act is to be implemented by other federal agencies

by their own rules to the maximum extent feasible; that the Act was not intended to repeal existing rules of other agencies; that the Commission has limited jurisdiction over government household goods traffic; that the Act did not enlarge this jurisdiction to now include reweigh rules applicable to such traffic, and that, without proper authority to regulate, the Commission's reweigh rules do not apply to this traffic.

DOD REWEIGH RULE

The Department of Defense, in its worldwide household goods program, has retained the former ICC reweigh rule for both its domestic and international shipments. This rule simply provides that the lower of two weights must be used to compute the charges due. This means that when the carrier weighs the shipment both at origin and destination—or reweigh—DOD pays based on the lower of the two weights. There is no doubt, either under the terms of the Household Goods Transportation Act of 1980, or under the ICC's interpretation, of the same, that DOD possesses the legal authority to retain this reweigh rule. Apart from these legal conclusions, however, the following will review the practical reasons for our retaining the lesser of the two weights rule.

The purposes of the statute were to increase competition and protect the shipper. Obtaining an accurate weight is the responsibility of the carrier. It should be done correctly at origin. Use of the lower weight of origin or destination (reweigh) provides the incentive for carriers to perform satisfactorily. Our Defense Department's current experience reflects that 75 percent of the reweighs conducted by industry are incorrect, for both domestic and international defense shipments. We believe adherence to use of the lower of the two weights will foster competition and protect the military member.

The lesser of the two weights rule saves the Government money. We have estimated that we save $4 million dollars each year by avoiding the arbitrary rule that carriers bill only on the reweigh weight. This figure is derived from instances where the destination (reweigh) weight exceeds the origin weight, and the majority (75 percent) of reweighs are incorrect.

The rule protects the servicemember to the maximum extent practicable, because each servicemember, who exceeds his weight entitlement, must pay—out of his own pocket—the excess charges. In other words the benefit of the doubt between the different weights is passed on to the servicemember in the form of the lesser of the two weights and total charges. The servicemember, due to the nature of military duties, is not generally available to witness either weighing.

DOD will continue to hold as a matter of concern Senator Danforth's interest in a national uniform reweigh rule, but, at the present time, the statutory language prevents the ICC from readopting its old rule (the current DOD rule) and DOD is precluded because of its worldwide program (domestic and international) from adopting the ICC rule for practical reasons.

Senator DANFORTH. General, thank you for being with us.

## STATEMENT OF MAJ. GEN. JOHN D. BRUEN, U.S. ARMY, COMMANDER, MILITARY TRAFFIC MANAGEMENT COMMAND, DEPARTMENT OF DEFENSE, ACCOMPANIED BY ROBERT WALDMAN, DEPUTY DIRECTOR, PERSONAL PROPERTY DIRECTORATE, AND MICHAEL GIBONEY, SUPERVISORY GENERAL ATTORNEY

General BRUEN. Good morning, sir.

I appreciate this opportunity to appear before you to make a statement and answer your questions regarding the Household Goods Transportation Act of 1980.

I am Maj. Gen. John Bruen, the Commander of the Military Traffic Management Command, commonly referred to as MTMC. With me today are Mr. Michael Giboney, our Command Attorney, and Mr. Robert Waldman, the Deputy Director of the Personal Property Directorate of the Command.

Within the defense transportation system, MTMC is responsible for worldwide surface cargo movement, and then the defense cargo

and passenger movement by all modes, including air within the United States.

We manage the household goods shipments for the military and civilian personnel of the Defense Department as part of our job. DOD relies on commercial carriers for this transportation, and we have a direct and vital interest in legislation affecting the household goods industry.

DOD is the Nation's largest single shipper of personal property with 873,000 shipments, costing over $1 billion annually, and a program of this magnitude requires very strong management and control at all levels. Our goal is quality service at the lowest cost to the Defense Department. Quality moves have a direct impact on reenlistment and retention. In fact, a spouse has far more influence over service retention than our young military members would dare to admit, or some of our older members for that matter.

The act has had considerable impact on our shipments. Significant to DOD are three: First, the Act fosters competition by increased rate filings. At the same time, as Mr. Taylor mentioned earlier, there has been no increase in the number of carriers in the household good moves that are affecting the Department of Defense. There has been increased rate competition and other independent actions with carriers, and we think that these actions support the act.

Second, protection for the shipper. We have a Defense quality control program at both the local and the national level, and it includes the carrier evaluation and reporting system [CERS] whereby we measure carrier performance.

Another part of the program, and another specific action, includes the Alaska loss and damage problem, which was out of control and required our action. This was a joint Defense/industry team effort, and it resulted in industry requesting publication of added written guidelines for shipments to Alaska. We are doing that.

We are now testing segments of the entire system to determine what needs to be fixed. Our quality control program is essential to decrease claims. These costs and morale inhibitors confirm our pressing need for an effective quality control program.

The third factor is the reduction of unnecessary regulations. It is mandated by the act, and as regulatory agencies relinquish authority, the responsibilities shift to the shipper, and we, MTMC, act as the shipper for the Defense Department. Some of our actions in this area are:

We have simplified our in-house carrier evaluation and reporting system by reducing the scoring elements from 36 to 3. We have simplified the rate filing procedures, reducing by an average of 50 percent the workload required for carriers to complete their administration of that process, and that saved preparation time by an estimated 3,000 hours. Also, the number of errors in tenders has been considerably reduced. It is down at least 4,500 from previous errors submitted during rate cycles.

A major movers association has congratulated us on these simplified procedures.

The standardized packing and containerization contract was operated by the individual services before November of 1981. We at

MTMC have taken over that program at the direction of the Department of Defense. It is now a single contract, and it is called a success by industry, as a matter of fact. This program required in excess of 500 pages in the contract itself, plus all the related material that supported that contract. It is now 120 pages all in one booklet, so it is a saving of 380 pages.

In conclusion, the act has had a positive impact within the Defense Department by increased competition, protection of the military shipper, and a reduction of unnecessary regulation by a Federal agency, the ICC. Carriers can aggressively market their services, and we are just seeing that process now. They have flexibility to price their services, so in our view the act offers unique opportunities for competition and improved service.

I appreciate the opportunity to appear before the committee, and I will be happy to take your questions.

Senator DANFORTH. General, would you give us your position with respect to this question of reweighing?

General BRUEN. In my opinion, sir, the reweigh position, of course, is that the carriers come to us to offer a service, we think that the correct weight ought to be determined at origin in the first place. We have had some difficulty with getting correct weights.

There is difficulty in administering a program when you go for a reweigh. Because of the commingling of shipments, it does require that the member witness the reweigh at destination and, as you know, a military member is not always available to do that. So in our view it ought to be that the correct weighing ought to be done at origin in the first place.

I think, as a matter of our doing business, we ought to be able to live with whatever is the lower weight, since the weight should have been done correctly by the carrier the first time. Use of the lower weight encourages better carrier performance. But I would like to ask Mr. Waldman if he has anything to say.

Mr. WALDMAN. We have found in our reweigh program that only 25.8 percent of the shipments reweighed are within the specific tolerance. That is, there is a difference of less than 100 pounds on a shipment of 5,000 pounds or less, or a difference of 2 percent or less on shipments over 5,000 pounds.

We take the position, because of this inability of industry to obtain accruate weights, that we should be charged for the lesser of the two in every instance. It protects not only the taxpayers' money but our members. When a member exceeds his weight entitlement, he pays out of his pocket for that difference in weight.

Senator DANFORTH. I think the question is, that may be the policy, but shouldn't the same policy apply to everybody who ships?

Mr. WALDMAN. I can't speak for everyone else, sir. We feel, with the magnitude of our program, we have to protect it and need that kind of rule for our reweigh program.

General BRUEN. Let me try to tackle part of that.

I think that as a part of our doing business with the industry, we ought to be free enough to go ahead and select the carriers that agree to live with the way we have been doing business historically. In that instance, the lower of the two weights has always been used. So in our procedures for doing business, it would seem to me

that we ought to be able to deal with the carriers who, in fact, do support that and work with us on it.

Senator DANFORTH. Is there a question here as to the applicability of the act?

General BRUEN. I don't think so. It doesn't affect competition. It does protect the shipper. It is our procedure in accomplishing moves, so I don't believe that it applies to the applicability of the act.

Mr. GIBONEY. The act applies to the Department of Defense, Senator Danforth. I agree with what Chairman Taylor said when he announced moments ago that their decision or interpretive statement in June simply recognized that under this act DOD had its own authority to have its own reweigh rule.

We, in DOD, do have a uniform rule for all DOD shipments. There is a difference between the ICC reweigh and the DOD reweigh. However, as the Commission has found, we have the lawful authority to have our reweigh rule. We feel simply that our reweigh rule protects the DOD shippers better than the ICC rule.

Senator DANFORTH. Is that right, though, to have two different rules, one for DOD and one for everybody else?

Mr. GIBONEY. We feel we have the right rule for DOD.

Senator DANFORTH. I am sure you do. I think the question that we have to face, or somebody has to face, is whether that is right, because the General was very forthcoming in stating the benefits of the new laws as far as DOD is concerned.

Mr. GIBONEY. There isn't, of course, complete uniformity between commercial COD shipments and DOD shipments across the board. There are a number of differences between a commercial shipment and DOD shipments, and this is one of those differences.

Senator DANFORTH. As far as somebody who is going to move from Fort Belvoir to Fort Leonard Wood, hopefully, the moving van shows up at Fort Belvoir and it arrives at Fort Leonard Wood. It is the same service. You use commercial movers, don't you? You just call them up and say, show up. People come up with a truck and load on the furniture, and so on. Then they arrive at Fort Leonard Wood a few days later. How does that differ from any civilian move?

General BRUEN. Sir, if I might, there are a few differences, I think, and it doesn't apply just to the domestic program but the worldwide program.

The military member is not always available to be pulled out to go attend the reweigh.

Senator DANFORTH. Whose fault is that?

General BRUEN. I think it is part of his job.

Senator DANFORTH. OK, but anybody else who is working has the same problem.

General BRUEN. Yes, sir, but I am not sure there is that much leeway with a military member being pulled out to go ahead and look at the reweigh in domestic and overseas shipments.

The key in my view is the procedural rule which says that the carriers who do business with us, and offer to accept our weigh procedures, ought to be permitted to do business with us.

Senator DANFORTH. In any event, you are satisfied with the general way that the act is working. You think that it has been of benefit to the shipper, in your case the Defense Department?

General BRUEN. Yes, sir, we do. From what we see and from our experiences, yes. We have quite a bit of work to do. Quality control is a big issue for us. There are some corrections that we need to make within the program, and I don't mean to belittle those at all. I think we need more work on reducing regulations, which we are doing, by simplifying those regulations. All in all, I do see the act as very positive.

[The statement follows:]

STATEMENT OF MAJ. GEN. JOHN D. BRUEN, U.S. ARMY

Mr. Chairman, members of the Committee, I appreciate this opportunity to appear before the Committee to make a statement and answer your questions regarding the "Household Goods Transportation Act of 1980." I am the Commander of the Military Traffic Management Command (MTMC). One of the Command's functions is to manage household goods shipments for the military and civilian personnel of the Department of Defense (DOD). The DOD relies on commercial carriers for this transportation and has a direct and vital interest in legislation affecting the household goods industry.

The DOD is the nation's largest single shipper of personal property with 873,000 shipments moved in fiscal year 1982 at a cost of over one billion dollars. Due to the magnitude of the personal property program, the DOD has established procedures for the selection of carriers, distribution of traffic, computation of charges, and quality control. The DOD uses those carriers with operating authority from the Interstate Commerce Commission (ICC). This traffic is distributed in such a manner as to reward the carriers who provide quality service at low cost. The costs are established from rates submitted voluntarily by commercial carriers tendered under Section 10721 of the Interstate Commerce Act. A program of this magnitude requires effective control at both the local and national level.

The highest quality service possible, at the lowest overall cost to the taxpayers, are the joint goals in the management of this program. The morale implications involved in the successful transport of our members' personal possessions, coupled with inflationary trends and budgetary restraints, make the accomplishment of these goals a delicate task. The quality of personal property moves has a direct effect on the quality of life for our servicemembers and their families. Good moves keep families happy and contribute to the reenlistment and retention of our highly trained people within each of the military services. A spouse has far more influence over service retention than our young military members would dare to admit. Recent improvements in the program are reflected in a current downward trend in the number of complaints from the servicemembers. It is an important program which requires continuous and intensive management.

The Household Goods Transportation Act of 1980 has had a considerable impact upon the moving industry. Of particular significance to the Defense Department are those provisions which foster competition, emphasize protection for the shipper, and reduce unnecessary regulation. I will address each of these areas separately and be happy to answer any questions.

FOSTERS COMPETITION

We at MTMC have witnessed an increase in competition in rate levels since the enactment of the Act; however, unlike the general freight area, we have not experienced a significant increase in the number of new household goods carriers entering into the industry. Additionally, we have not experienced the expansion of operating authorities for existing small carriers, a situation which does not lend itself to increased competition.

In the area of rate competition, the DOD has benefited from a dramatic increase in the number of lower rates filed voluntarily by independent carriers. In 1979, the year before the Act, carriers filed a total of 9,902 individual domestic rate tenders, offering reduced charges, to the DOD. The number of filings have increased steadily each year since 1980, and reached an all time high with 127,291 independent rate tenders submitted in 1982. That represents a 1,186 percent increase in tenders since the Act was passed. It is important to note that this increased level of competition

was voluntary. We beleive this is a consequence of the competitive environment created by the Act and in consonance with the intention of Congress.

The increased rate competition has been due primarily to business decisions made by established carriers and not the result of an influx of new carriers into the industry. The introduction of new carriers into the household goods arena could also increase the competitive nature of the industry; however, the number and type of carriers has remained fairly constant over the years. The Household Goods Transportation Act of 1980, in our view, has done little to improve this situation. This is primarily due to the restrictive language in the Motor Carrier Act of 1980, which specifically denies household goods linehaul carriers the opportunity for the "ease of entry" to obtain operating authority which is afforded carriers of general commodities. This situation does not assist the DOD in expanding its program to increase the participation of small and minority owned businesses.

Many carriers participating in the DOD household goods program have been more receptive to independent action since passage of the Act. The earlier reference to the more than one thousand percent increase in independent rate filings is one example. Another example relates to our experience during the summer of 1982 concerning changes to the reweigh rules and a proposed summer seasonal increase in rates.

Our primary concerns with any new program are the impact on the individual servicemember and the cost to the taxpayer. We must evaluate the practical considerations before launching any new program.

For many years, the DOD reweigh rules were the same as the ICC rules. Both required the shipper to pay on the oesser of the two weights. It was equitable and simply to administer and audit.

Carriers' charges are based primarily upon the weight of each shipment. Due to the variety of commodities and the commingling of shipments, it is often difficult to obtain accurate weights. The practice of reweighing, or obtaining a second weight at delivery, came to be the most efficient method of assuring reasonable charges. For years, the rules concerning reweighs were designed to protect the shipper. The gross of a vehicle may vary as it refuels or loads additional cargo, but the net weight of the property in an individual shipment should not change. If a carrier weighs a shipment properly, with accurate computations for the difference in the gross and net weights, it is reasonable to expect that the lower weight is proper.

Pursuant to congressional mandate in the Act to provide carriers the maximum possible flexibility in weighing shipments, the ICC established a new reweigh rule. The new rule ignored any initial weighing and directed that charges would always be based on the reweigh weight, regardless of the difference in the two weighings. The new reweigh rule ha shifted the risk of reweig from the carrier to the individual shipper. If applied to DOD, the servicemember must assume the risk of additional personal cost.

The carriers' rate bureaus filed with DOD the same new reweigh rule promulgated by the ICC to be effective beginning this year. MTMC determined that this new rule was not in the best interest of either the taxpayer or the individual servicemember. The previous rule saved the Government over four million dollars each year through elimination of improper charges for shipments found to weigh less at delivery than they had been calculated to weigh at origin and helped protect the individual servicemember from paying additional costs. For these reasons, and to effectively manage the large volume of DOD traffic, MTMC requested the rate bureaus withdraw the change and retain the original rules. When the rate bureaus refused to withdraw these new procedures, individual carriers were contacted and offered the opportunity to take independent action to waive the new reweigh rule and voluntarily retain the previous procedures. The majority of all carriers currently participating in DOD traffic elected to waive the new rule. The carriers currently responding represent those who actually transported in excess of 95 percent of all the domestic DOD shipments during the previous year. The rate bureau and a few selected carriers challenged MTMC's action in Federal Court. The issue was dropped when the ICC, on its own initiative, published a formal Interpretive Statement on 17 June 1982 which held that the DOD could use its own reweigh rule.

A similar action involved the proposed summer seasonal rate increase. The rate bureaus filed a unique ten percent rate increase which was to apply to all domestic traffic moved between 1 June 1982 and 30 September 1982 and for each year thereafter. This special increase was to be in addition to all other transportation increases. This arbitrary increase, never before proposed by the industry for DOD traffic, would have increased the cost of moving military household goods by eleven million dollars during the first year alone. Based on the rationale that the increase was not justified as applied to DOD, MTMC again requested the rate bureaus with-

draw the provision. The rate bureaus declined, and MTMC included the summer seasonal increase with the reweigh rule as an issue for consideration for voluntary independent action. The latter issue has been challenged by a number of carriers and the rate bureaus in Federal Court and is still pending. Overall, there is little question that individual carriers have been more receptive to independent action since the passage of the Act.

PROTECTION FOR THE SHIPPER

Emphasis within the Act regarding protection of the shipper has assisted DOD in the implementation of quality control programs to protect its members. "Quality of Service" has become the watchword of the DOD personal property program. To assist the carriers, while providing clear and more measurable standards, we have revised and simplified our basic quality control program for domestic shipments. Known as the Carrier Evaluation and Reporting System, or CERS, this program is key to reducing loss and damage while improving service levels. We have reduced the scoring elements from the previous 36 to just 3 and measure each carrier's performance based on timely pick up, ontime delivery, and the absence of loss and damage. This program does not increase paperwork by the carriers. It is an internal DOD system which provides standard criteria for the 171 DOD shipping activities in the United States to measure carrier performance at the local level, and for MTMC to evaluate the carrier's service at the national level. Although some members of the industry would prefer we not grade their performance at both the local and national level, we must have a complete quality control program. The recent revision of CERS has simplified the procedures and reduced the time required for the evaluation process by approximately 60 percent. CERS is an effective quality control program that has had a positive impact in improving service for our members while reducing the loss and damage previously experienced in household goods movement. Ninety-nine percent of our domestic shipments are now picked up on time, and more than 93 percent of these domestic shipments are delivered by the required delivery date. Although reduced, incidents of reportable loss and damage are at a nationwide 33 percent level. For this reason, the further reduction of loss and damage and their resultant claims is currently a major thrust within the DOD quality control program.

In October of this year, we instituted a special program for shipments going to Alaska. We developed this program in close coordination with the moving industry after we discovered that shipments destined to Alaska were experiencing loss or damage at an alarming 73 percent rate. A joint team consisting of representatives from industry and the Defense Department formed a special task force which confirmed the excess rate of loss and damage and provided recommendations to utilize different methods of movement to Alaska. We are carefully monitoring these shipments to determine which methods result in the best service with the least potential for loss or damage.

As a self insurer, the Government ships all commodities at the lowest released valuation. This is one of the reasons DOD has lower rates. Household goods carriers are only required to pay members for their loss or damage at a rate of 60 cents per pound per article. The Government, by statute, compensates the member as necessary for the difference in their claim up to a maximum of $25,000 per shipment. Last fiscal year the DOD paid out more than $62 million to its members for claims involving loss or damage to their personal property. These costs and morale inhibitors confirm our pressing need for an effective quality control program with a Carrier Evaluation and Reporting System (CERS) so that we can specifically identify unsatisfactory carriers and also commend those carriers who do well.

REDUCTION OF UNNECESSARY REGULATION

The DOD has been conforming to the congressional mandate to reduce regulations and paperwork for the carrier industry, "to the maximum extent feasible consistent with the protection of individual shippers." We have succeeded, but it has not been an easy task. As the regulatory agencies relinquish their authority, the responsibilities shift to the shippers. We have observed this shift in all fields of transportation (air, bus, and rail as well as motor carrier), and by all types of shippers in addition to the Department of Defense.

We have been able to achieve considerable success in reducing regulatory procedures. We have revised and simplified most of our major regulatory guidelines. Some examples are:

First, as mentioned earlier, we have dramatically simplified the CERS. We reduced the number of scoring elements from 36 to just three. We also eliminated the

complicated award of incentive tonnage. The published internal procedures themselves have been reduced from 48 pages of legal size paper to 34 pages of ordinary letter size. It is important to note that there are no paperwork requirements levied upon industry in CERS.

We have simplified the rate filing procedures which the carriers follow when they submit their independent rates. The procedures were first simplified in 1981, reducing by 50 percent the time required for carriers to complete the necessary paperwork. They were further simplified in 1982 by reducing the number of different rate filing options by 75 percent. These actions helped cure a long standing problem within the industry. For years the carriers had a large number of their submissions rejected because of errors in preparation. Since we simplified the procedures and reduced the content, the rejection rate has dropped from 22 percent to one and one-half percent. The American Movers Conference has congratulated DOD for this major improvement.

We have completely rewritten, simplified and clarified the Personal Property Traffic Management Regulation, DOD 4500.34-R. It will be reprinted and distributed next year. In response to the intent of the Household Goods Transportation Act of 1980, we published a notice in the Federal Register on 17 December 1980 soliciting comments concerning the relationship of the rules and procedures in this regulation to the Act. Not one comment has been received.

We assumed responsibility for a packing and containerization contract which had been previously administered by the individual military services on a fragmented basis. The contract has been standardized and now includes special quality assurance provisions. These provisions, which were thoroughly coordinated with industry representatives during preparation, provide for financial setoffs from the contractor for services not performed, or performed in less than a satisfactory manner. The revised contract contains approximately 120 pages, but for the first time includes all regulatory information which was only contained by reference in the previous contract. Additionally, the previous contract, with all referenced material, exceeded 500 pages. Now provided with a complete document, potential contractors are no longer required to obtain and research additional references. The contract is currently being tested at six locations in the United States. The successful bidders, currently performing under the contract, appear to be satisfied. The American Movers Conference considered these simplified procedures a success among other successes in our joint efforts.

We have not published any new or additional regulations affecting interstate traffic since passage of the Act. The only new procedures concern the filing of intrastate rates. Development of these procedures were forced upon us by the sudden deregulation of motor carriers by the State of Florida. They have since been introduced into the states of Arizona, Idaho, Maine, and Wisconsin which have also deregulated trucking. For the first time, these new procedures enable us to develop a standard program for our intrastate business, a 23 million dollar a year program. Beginning with California, we are now phasing this standard program into all remaining states. We must have a standard program, applicable to all intrastate traffic in order to effectively manage the program.

Deregulation means that shippers must be more alert to protect their interests and that of their customers. Our interests concern the taxpayers and servicemembers. We must maintain a dynamic program which accomplishes this protection, and yet is fair and unbiased for all commercial carriers. We shall continue to simplify and enhance existing programs, consistent with the protection required for a program of over one billion dollars annually.

## CONCLUSION

The Household Goods Transportation Act of 1980 has had a positive impact on increased competition, protection of the shipper, and the reduction of unnecessary regulations. Carriers are permitted to aggressively market their services, providing desirable opportunities for both carriers and shippers. Carriers now have the flexibility to best serve the individual shipper and can meet specific demands for quality and price. The provisions of the Act encourage shippers to deal more directly with individual carriers and offers a unique opportunity for increased competition. These factors enhance the Defense Department's ability to procure quality moving services at reduced cost to the taxpayer. We believe the Act fosters increased competition and improved service.

Mr. Chairman, I thank you for this opportunity to present a statement to the Committee. I will be happy to answer any questions.

Senator DANFORTH. General, thank you very much.
Next we have Mr. Edward H. Rastatter of DOT.

STATEMENT OF EDWARD H. RASTATTER, CHIEF, REGULATORY POLICY DIVISION, DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY VICTORIA DAILEY, ECONOMIST, REGULATORY POLICY DIVISION

Mr. RASTATTER. Good morning, Mr. Chairman, and members of the committee.

Thank you for inviting the Department here today to discuss the administration's views on economic regulation of household goods carriers. With me this morning, on my left, is Dr. Victoria Dailey who helped prepare our testimony.

During the past 2 years, household goods carriers have clearly begun to operate in a more flexible, more competitive environment made possible by the reforms contained in the Household Goods Transportation Act of 1980, and the Motor Carrier Act of 1980. I am pleased to report that, as we also testified this past June concerning the trucking industry in general, reform is working.

As the ICC has just testified, since the enactment of the Household Goods Act, carriers have begun to offer shippers a wide variety of pricing and service options not available before reform. Prior to enactment some of these options were expressly forbidden; others were perceived by carriers as subject to legal challenge. The Household Goods Act not only made many new options legally feasible, it has also increased the competitive forces that encourage carriers to offer them.

It appears that individual consumers are very enthusiastic about binding estimates. The carrier that pioneered binding estimates, and offers them automatically unless the customer desires the traditional nonbinding type of estimate, continues to grow faster than most other large van lines.

Traditionally, consumer complaints about household goods carriers have been the largest component of the ICC's complaint workload. The reforms contained in the Household Goods Act were meant to encourage improved consumer information and better performance by carriers in meeting the needs of shippers. The complaint evidence the ICC has just recounted shows that consumers are obtaining the benefits of reform.

It appears that carriers have been taking advantage of the opportunities offered by the Household Goods Act to provide their customers with new and better services. We believe that the marketplace, without the heavy hand of regulation, should reflect what consumers want and reward those carriers that provide it.

Although the state of the economy has had a negative impact on all types of motor carriers, it appears that the household goods carriers for which information is available have fared relatively well. However, we do not yet have any systematic data concerning the financial condition of small household goods carriers at this time.

We have recently funded a study of small class III motor carriers of various types, and we hope to learn more about small household goods carriers, as well as other types of small carriers.

In summary, Mr. Chairman, the evidence we have seen to date demonstrates that the Household Goods Act has provided desirable opportunities for carriers and shippers alike. Many new price and service options have been offered to customers of household goods carriers; shipper complaints have decreased; and, in spite of the recession, carriers' financial condition has improved somewhat since 1979.

This concludes our formal testimony, Mr. Chairman. Dr. Dailey and I will be pleased to answer any question you or other members of the committee may have.

Senator DANFORTH. Thank you very much, sir.

As I understand it, you don't have any evidence so far on the effect of this act on small carriers?

Mr. RASTATTER. That is right, sir. I am afraid that no one has much information on small carriers in general.

Senator DANFORTH. Do you have any reason to suppose that small carriers and large carriers have fared differently under the act?

Mr. RASTATTER. Not directly.

I really prefer to answer that after we have some results from our survey. Perhaps the industry itself has done some surveys of its small carriers, and perhaps you could ask some of the following witnesses that same question.

Senator DANFORTH. So you just have absolutely no knowledge or no reason to suspect that there is any difference between large carriers and small carriers in any event.

Mr. RASTATTER. No, sir, no direct reason for that.

Senator DANFORTH. Any indirect?

Mr. RASTATTER. Nothing systematic. We just haven't seen any systematic data, and that is why we are doing the survey, to look at small carriers in general.

Senator DANFORTH. That will compare how small carriers have done with how large carriers have done?

Mr. RASTATTER. We are surveying about 5,000 small class III carriers who are not required to report to the ICC, so literally no one knows much about them. We just want to see how they are doing.

Senator DANFORTH. When will that be completed?

Mr. RASTATTER. I think in the middle of next year, perhaps in the late Spring.

Senator DANFORTH. With respect to volume discounts, do you have any information as to the effect of the use of volume discounts on shippers and, perhaps, any differential in the benefits depending on the size of the shipper?

Mr. RASTATTER. No. I think, sir, that in terms of volume discounts, large accounts have always had better opportunities both in household goods movements as well as any other type of transportation movements, and this industry is no different.

I think that as long as there is sufficient competition, we don't really have to worry very much about abusive of pricing practices.

Senator DANFORTH. You don't view that as predatory or potentially predatory?

Mr. RASTATTER. I think the ICC is in process of gathering information on this subject, and we are actively looking at that proceeding. We would like to look at the evidence.

Senator DANFORTH. Thank you very much.
Mr. RASTATTER. Thank you, Mr. Chairman.
[The statement follows:]

STATEMENT OF EDWARD H. RASTATTER, CHIEF, REGULATORY POLICY DIVISION, DEPARTMENT OF TRANSPORTATION

INTRODUCTION

Mr. Chairman and members of the Committee, thank you for inviting the Department here today to discuss the Administration's views on economic regulation of household goods carriers.

During the past two years, household goods carriers have clearly begun to operate in a more flexible, more competitive environment made possible by the reforms contained in the Household Goods Transportation Act of 1980 (Household Goods Act) and the Motor Carrier Act of 1980 (MCA). I am pleased to report that, as we also testified this past June concerning the trucking industry in general, reform is working.

Carriers have made a wide variety of new price and service options available to their customers, the level of consumer complaints has continued to decrease, and the financial condition of carriers reporting to the ICC has improved since 1979 in spite of the recession. Moreover, although economic conditions have had a significant impact on all types of motor carriers, current rates of return on equity are substantially higher for large household goods carriers than for other large motor carriers.

*New price and service options*

Since enactment of the Household Goods Act, carriers have begun to offer shippers a wide assortment of pricing and service options not available before reform. Prior to enactment, some of these options were expressly forbidden; others were perceived by carriers as subject to legal challenge. The Household Goods Act not only made many new options legally feasible—it also has increased the competitive forces that encourage carriers to offer them.

These new options include binding estimates, full replacement cost liability coverage, compensation for untimely delivery, senior citizen discounts, discounts to specific geographic locations, volume discounts, and discounts for prepayment of charges.

It appears that individual consumers are very enthusiastic about binding estimates. The carrier that pioneered binding estimates—and offers them automatically unless a customer desires the traditional non-binding type of estimate—continues to grow faster than most other large van lines, while remaining profitable (return on equity of about 15 percent).

*Customer complaint levels have decreased*

Traditionally, consumer complaints about household goods carriers have been the largest component of the ICC's complaint workload. The reforms contained in the Household Goods Act were meant to encourage improved consumer information and better performance by carriers in meeting the needs of shippers. The evidence we have seen shows that consumers are obtaining the benefits of reform.

According to a recent ICC report, in 1979 the ICC received close to 25,000 complaints against household goods carriers. In 1980, complaints decreased to slightly less than 19,000. By 1981, complaint levels had fallen to just under 11,000—less than half the 1979 level.

It appears that carriers have been taking advantage of the opportunities offered by the Household Goods Act to provide their customers with new and better services. We believe that the marketplace—not the heavy hand of regulation—should reflect what consumers want and reward those carriers that provide it.

*Recent financial performance of household goods carriers*

Despite the recession of the past two years, household goods carriers large enough to be required to report to the ICC have improved their overall performance since the Household Goods Act was enacted. From 1979 to 1981, net income of these Class I and II carriers (before taxes and extraordinary items) increased by 50 percent; profit margins rose from 3.0 to 3.9 percent; and average operating ratios improved from 98.9 to 98.1 percent.

Although the state of the economy has had a negative impact on all types of motor carriers, it appears that the household goods carriers for which information is available have fared relatively well. We do not have any systematic data concerning

the financial condition of small household goods carriers at this time, although we have recently funded a study of small (Class III) motor carriers. This study will include small motor carriers of various types, and we hope to learn more about small HHG carriers as well as other types of small carriers.

SUMMARY

The evidence we have seen to date demonstrates that the Household Goods Act has provide desirable opportunities for carriers and shippers alike. Many new price and service options have been offered to customers of household goods carriers; shipper complaints have decreased; and in spite of the recession, carriers' financial condition has improved somewhat since 1979.

Senator DANFORTH. Next we have Peter Ruane, president of National Moving & Storage Association, and Richard Russell, chairman of the board of directors of the American Movers Conference.

**STATEMENTS OF DR. T. PETER RUANE, PRESIDENT, NATIONAL MOVING & STORAGE ASSOCIATION; AND RICHARD L. RUSSELL, CHAIRMAN OF THE BOARD OF DIRECTORS, AMERICAN MOVERS CONFERENCE, ACCOMPANIED BY CHARLES C. IRIONS, PRESIDENT,**

Dr. RUANE. Good morning, Mr. Chairman.

I would like to start off by thanking the chairman for his leadership over the past year on the Prompt Payment Act. As you recall, we discussed that last year during these hearings, and we had the opportunity to work closely with you and your staff on that specific legislation.

In general, I would also like to thank the entire committee, again, for the opportunity to reappear and discuss the views of the National Moving & Storage Association on the implementation of the Household Goods Transportation Act. I will, of course, summarize the comments that have been provided.

First, we would agree with earlier statements that it is premature to draw conclusive evidence or judgments on the impact of the act. Notwithstanding that, there is some discernible evidence of certain trends on which we would like to comment.

The first point is in the area of pricing and industry finances. The discussion in the last 50 minutes, I think underscores one major point we would like to make today, which has been stated in the past. There is clear evidence that the regulatory agencies lack insight and data on the impact of the legislation and implementing rules on the small business component of this industry. Absent that information, it befuddles us to understand how specific policies and rules can be changed, or developed, without that very meaningful information.

We believe, as has been stated earlier, that volume rates are discriminatory, particularly to the general consumer. We feel that current industry discounting practices are potentially predatory. We were very heartened to learn again today, as well as last week in the House hearings, that the Commission is committed to a very strong oversight role in their current proceeding MC-166. We would urge this committee to encourage the ICC to insure that that proceeding is dealt with in a comprehensive manner.

As part of our statement, we have provided some very preliminary evidence, information from a survey that our association has conducted in recent weeks. The information is sketchy at this point

based on a small sample. It is not offered as a random sample, but we feel that it is quite representative of the impact of the act on the small business component of the industry.

We will, of course, provide the full survey and the results to this committee for the record later on. I think, upon scanning that survey, it identifies some major points, particularly in the area of paperwork burden and the economic impact of the act.

We would like to repeat our concern here this morning about a practice that has raised its head in greater form in the past few months, and that is the activities of the "self-haul" industry in which that industry apparently is providing services that really are full moving services, and they are not under the regulatory oversight of either State utility commissions or the Federal Government.

Senator DANFORTH. I don't want to interrupt you, but by self-haul, do you mean Ryder trucks and U-Hauls, that sort of thing?

Dr. RUANE. Yes, that is correct.

This presents some dilemmas for both the mover locally who is really at a competitive disadvantage if these same companies are not being regulated, if they are offering services such as drivers. It raises questions in safety, and it also raises questions in the loss of taxes for the local jurisdictions.

We are also concerned, as stated in our statement, with some proposed pooling arrangement policies of at least one major company, which we feel is somewhat of a precedent or could be a precedent for the entire industry. We encourage this committee to have the ICC look at this very closely.

We would agree with the other statements you are going to hear today about the role of the Department of Defense in implementing the legislation. In our opinion, we feel the DOD has essentially carried out their actions in a very independent manner. I think some of the comments today would underscore that. We would not agree that their particular implementation of the HHGTA should be separate from the rest of the Federal Government.

We have a brief comment about the current consideration of the highway user tax that this committee is involved in. We would encourage, again, the committee to consider some of the statements the industry has already made this past week and earlier about the negative impact of that proposal.

In summary, Mr. Chairman, I would like to also request that this committee really take a hard look at the future of the ICC and send some clear signals to the industry as to where it is going. I am referring specifically to our comments on the sunsetting of the agency.

Thank you.

[The statement follows:]

STATEMENT OF DR. T. PETER RUANE, PRESIDENT, NATIONAL MOVING & STORAGE ASSOCIATION

BACKGROUND

The National Moving & Storage Association (NMSA), formerly the National Furniture Warehousemen's Association, is a non-profit trade association organized and existing under the laws of the Commonwealth of Virginia. Its officers are located at 124 South Royal Street, Alexandria, Virginia 22314.

NMSA was founded in 1920. It is the oldest and largest of the natioal trade associations of the household goods moving and storage industry ("industry"). Its membership consists of over 1,400 moving and storage companies located in communities throughout the United States and the world. Almost all the NMSA's members serve as local moving agents for the large national van lines. Additionally, many NMSA members possess Interstate Commerce Commission ("ICC") authority to engage in the interstate transportation of household goods in their own right, without functioning under the umbrella of van line operating authority or affiliation. The vast majority of the Association's members are relatively small moving companies having only one or two commercial locations. Approximately 80% of NMSA's members earn $1,500,000 or less. Nearly half of the membership, 43%, earns $500,000. Overall, NMSA membership is best characterized as representative of the small business component of the industry.

## GENERAL STATEMENT

NMSA appreciates the opportunity to reappear before this Committee to present its views on the implementation of the Household Goods Transportation Act of 1980 (HHGTA). During our testimony before this Committee last year (October, 1981), we expressed our support for the Act as a balanced piece of legislation designed to reduce regulatory burdens for the industry and simultaneously add protections for the consuming public. We also expressed our concern that the industry was not being given sufficient time to adjust to the dramatic deregulatory changes. We believe that the industry's experience of the past year vindicates our earlier concern. Binding estimates and volume discounts have, for example, led to below cost pricing, thus contributing to the sluggish financial condition of agents and warehousemen.

The moving and storage industry is adjusting to the deregulated environment. However, there is a need for the Congress and the Federal government to be more sensitive to the double barreled impact of radical regulatory change in a recession laced economy. Such sensitivity will enhance this industry's ability to adapt.

## NMSA SURVEY RESULTS

As part of our efforts to assess the impact of the HHGTA, NMSA recently conducted a survey of its U.S. membership. A total of 55 responses from 25 states have been received to date (the results are still coming in). The results of this survey and our general experience form the basis for this statement.[1]

Among the broad goals of the Act are the reduction of unnecessary regulation, the strengthening of consumer remedies and protections and the establishment of carrier flexibility in pricing and services.[2] The NMSA comments address our preliminary views on how each one of these broad goals have been realized thus far.

## REDUCTION OF UNNECESSARY REGULATION

*Paperwork burden has been shifted, but not uniformly reduced*

Seventy-three percent of the NMSA survey respondents felt there has been no reduction in the overall amount of paperwork and seven percent felt this burden had actually increased. Most respondents stated that the Act had simply resulted in a shift of paperwork. A number of examples were given. The growing use of binding estimates requires that movers develop appropriate new forms. As federal regulations decrease, some states have initiated their own new regulations. Movers are still required to keep records of claims and late pickup and deliveries. A number of members noted that tariffs are changing so rapidly that computer terminals are necessary to keep pace with the changes. This is a business cost impact not necessarily foreseen when the legislation passed.

A number of areas were cited where regulation has lessened. The discontinuance of mandatory receipts (for each COD shipment), performance reports and "order for service" requirements (for national account transfers) were cited as positive developments.

Survey respondents similarly felt that the Department of Defense (DOD) was not fulfilling the goal of reducing regulatory requirements. Eighty percent of those re-

[1] This survey was not randomly conducted in a statistical sense. However, based on our knowledge of our members, we believe it accurately reflects the experience of our membership as a whole and the small business component of the industry in general. A copy of the survey results and the instrument are attached to these comments. A more complete analysis will be provided later for the Committee's review.

[2] H. Rep. 96-1372, 96th Cong. 2d sess. 5 (1980).

sponding saw no change in DOD paperwork requirements. One mover noted that the new Air Force pack and crate contract had increased in length by a dozen pages and that the contract required legal expertise to understand it. Another stated that new intrastate regulations were burdensome to small business operations. NMSA reiterates its concern expressed last year that DOD's "independent" approach to adherence to the HHGTA is of grave concern to the industry.

### CONSUMER REMEDIES AND PROTECTIONS

*ICC enforcement is incomplete*

Section 8 of the HHGTA restructured and strengthened the penalty provisions concerning the transportation of household goods. It is, however, a well known fact that ICC activities have been greatly curtailed in the move towards deregulation. This is graphically illustrated by the NMSA survey. Only one respondent felt that there had been a change towards greater enforcement by the ICC.

The reduction of ICC staff and budget raises questions about the ICC's ability to implement the HHGTA. Given the evidence to date it is reasonable to question the need for certain rules absent the ability of the ICC to monitor them. This is of major concern to NMSA in regards to the ICC's attention to the activities of the self-haul industry.

*Scrutiny of self-haul industry needed*

The self-haul industry has recently taken on programs that warrant the Commission's full scrutiny. NMSA respectfully requests that this Committee direct the ICC to investigate the programs of the self-haul industry. Many NMSA members have remarked that this sector is now offering broader services to the consumer and yet is not subject to the enforcement, oversight and filing requirements of the typical mover. This puts the average agent at a competitive disadvantage that has inadvertently been created by Federal action.

In addition, this Committee should be mindful that many self-haul activities are escaping the state registration fees for vehicles and trailers by registering them in the so called "safe-harbor" states that do not require fees. These same vehicles in fact operate in states that do require fees. In effect, they pay no taxes, including Federal taxes, effectively enhancing their ability to compete with the regulated moving industry. The Congress concern with raising additional revenue for restoration of the nation's highways and bridges make this an area of fertile exploration.

*Dispute resolution programs underutilized*

Section 7 of the HHGTA established minimum requirements for informal dispute settlement programs. These programs were established to resolve shipper disputes in an expeditious and fair manner.

Only 4 NMSA respondents indicated that they had used the dispute settlement program and found it helpful. Many agents indicated that they turned consumer claims over to the carrier or to the insurance company, thus negating the need for dispute settlement actions. Some stated that they had advised consumers of the existence of the program, but that the consumers had never indicated an interest in participation. While NMSA remains committed to the dispute settlement mechanisms, we are aware that consumer complaints are down and attribute this to the industry's better performance and the general drop in shipments over the past year.

### ESTABLISHMENT OF FLEXIBLE AND INNOVATIVE PRICING AND SERVICES

*Industry financial performance is sluggish at best*

A recent report (dated September 1982) on the financial condition of the interstate household goods industry was prepared by the ICC Office of Compliance.[3] The report indicates, among other things, that tonnage (of transportation goods) has declined since 1979 and that revenues from 1978–1981 have only increased at the same rate as the consumer price index (pages 7–9). A more recent report (dated December 2, 1982) by the Household Goods Carriers' Bureau indicates that the earnings of the nations 15 largest household goods carriers declined during the third quarter of 1982, as compared to the same period in 1981. The decline is significant for the industry as a whole, given that these 15 carriers account for approximately 80 percent of the total revenues earned by intercity household goods carriers. We believe data on the performance of agents and small carriers would reflect even greater declines.

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[3] "Interim Assessment of the Interstate Motor Carrier Household Goods Transportation Industry, 1982", Ray Atherton, Chief of the Compliance Branch, Office of Compliance and Consumer Assistance (ICC).

These studies indicate that the household goods industry is experiencing economic problems despite some rate increases over the past year.

The NMSA survey results and general experience affirm, however, that agents are experiencing financial difficulties. Seventy-seven percent of the respondents indicate that their revenues decreased or remained at a standstill. Market shrinkage, poor regional and national economic conditions and increased competition are cited as the responsible factors.

In the area of increased competition, respondent indicate that a number of the new pricing methods have led to below cost pricing. According to one member:

"With the COD binding estimate and the national account volume discount program from the van lines, the revenue per move has decreased—even despite rate increases. Our company is fighting competitively for each account and I would say, on the COD market, for each move as we have never competed before."

NMSA favors the increased competition brought on by the HHGTA and the economic situation but argues strongly that the ICC should take a closer look at industry pricing practices to clearly identify any predatory actions. Closer scrutiny is particularly important in the case of the small mover. There is a real lack of information on how the Act is effecting this section of the industry. In our opinion, the smaller mover is bearing the brunt of the financial difficulties in the industry. The ICC has a current proceeding in the area of pricing (Ex Parte No. MC–166), but NMSA believes this is only a pro forma treatment with no strong intent to rectify problems that emerge. NMSA requests that this Committee urge the ICC to deal with this problem in a thorough manner with sensitivity to the impact of current pricing practices on the small agent and warehouseman and the general consumer.

In light of the difficult times for the industry, NMSA wishes to publically express its thanks to Senator Danforth for the key role he played in the passage of the Prompt Payment Act of 1982. This Act is helping thousands of small businesses throughout the country to survive financially. Given that the slow pay problem has also been in evidence on the state level, a state slow pay coalition has been formed to act as a clearinghouse of information and an advocate of legislative change on the state level, NMSA is playing a key role in this coalition, having helped in its formation and actively supporting its efforts as a charter member.

### VOLUME DISCOUNTS UNFAIR TO SMALL MOVER

As previously indicated, NMSA represents the small business component of the household goods industry. Volume discounts favor the larger carrier because the smaller mover simply does not have the financial base or organizational capacity to consistency compete for discounts based on volume. Seventy-one percent of our survey respondents indicated that volume discounts were having a harmful effect on their business. Most indicated that volume discounts were leading to below-cost pricing and predatory behavior. In the words of one member:

"This practice [volume discounting] is actually a price war. The effect is lower profit margins for all involved but mostly affecting drivers."

And another:

"We have seen widespread volume discounts on what is commonly called the 'COD' type of business. We have seen where our competitors have been quoting on price levels up to 25 percent below tariff charges."

The ICC should establish guidelines on the nature of a predatory rate. In the absence of these guidelines, volume discounts could foster the very kind of industry concentration that the Act was designed to prevent. Finally, as we also noted in last year's testimony, the average COD shipper does not enjoy such discounts and this reality raises serious equity issues.

### BINDING ESTIMATES ARE LEADING TO LOSS OF REVENUE

Section 4(a) of the Act provides that household goods companies may offer a binding estimate to a potential shipper. A binding estimate is, in reality, a contract to provide a set of services without reference to the precise cost involved.

Twenty-eight of our survey respondents (51 percent) offer binding estimates. Twenty-two of this number (79 percent) feel that binding estimates are unfair to the mover. Most indicated that they offer binding estimates because they are forced to by the competition.

The ICC report cited earlier noted the effect of binding estimates on the revenues of the 5 largest carriers. The report compared the average revenue per item transported by each carrier under binding and non-binding estimates. It found that the revenue of 4 out of the 5 carriers were substantially reduced when binding estimates were given. The ICC argued that the cause of the reduced revenue is the lack

of precise estimates being given by the agents. The ICC did not address whether the consumer was in fact paying more under a binding estimate versus use of the tariff.

The NMSA survey and the ICC report both indicate that the majority of agents are experiencing difficulty in adjusting smoothly to the binding estimate. As a result, costs are being underpriced and revenues decreased. The industry's experience with binding estimates underlines a basic point of NMSA's testimony before this Committee last year: more time is needed for the industry to digest and conform to the many novel regulatory changes and the full impact of these changes must be gauged with the existing national economic recession.

### MILITARY RATE PROGRAM POSES FINANCIAL DANGER TO INDUSTRY

The DOD's proposed Intrastate Rate Program may also contribute to financial instability in the industry. This program awards incentive tonnage to the lowest rate setters. The low cost carrier is awarded 50 percent of the total tonnage and other carriers that adjust to the low rate share equally in the remaining tonnage.

The military claims this proposal will enhance competition. In the opinion of NMSa, the opposite result—less competition—is far more likely, for two reasons. One, awards are based on bids that bear little relation to actual costs, thereby forcing carriers to offer services at non-compensatory rates. Two, household goods carriers already have various tariff rates on file with the state or state tariff bureaus. The military's filing program obliges carriers to assume an additional paperwork burden by forcing them to refile their rates with the military.

In Florida, only 30 of some 300 carriers have filed to bid in the DOD rate program. The low number, in our opinion, reflects the dual problem of non-compensatory rates and a higher paperwork burden.

### EXORBITANT HIGHWAY TAX COULD CRIPPLE SMALL MOVERS

The Senate Finance Committee is currently considering the administration's highway user tax proposal (S. 3044 Highway Revenue Act). NMSA believes that this nation's highway and bridge systems need to be upgraded, and we support the five cent per gallon fuel tax increase, in addition to a fair increase in truck user and excise taxes. However, a portion of the present proposal includes a 200% tax increae on trucks. The increase is particularly steep for larger trucks. This increase is exorbitant and will impose a serious financial burden on small movers and owner-operators. NMSA joins with other industry groups in opposing this portion of the proposal that imposes unreasonable taxes on truck owners and operators. A more equitable formula should be established.

### ADVERSE IMPACT OF NEW POOLING ARRANGEMENTS

Both the Household Goods Transportation Act and the Motor Carrier Act stress competition and reduced regulation as ways of achieving a better and more effective motor carrier service. As part of this effort, the agents' flexibilty to utilize his own operating authority was greatly enhanced when the operational regulations of the household goods carrier were revised to conform to the HHGTA.

At present, however, a proposed van line policy threatens the ability of the agent to operate independently. This proposal, currently being investigated by the ICC, [5] gives the agent an option to either establish a separate subsidiary or lose its agent status. If the proposal is implemented, it will likely set a pattern for agent-van line relationships throughout the industry.

NMSA believes that this van line proposed policy violates the spirit of the Motor Carrier Act and the HHGTA. The cost to the typical agent of establishing a subsidiary business is prohibitive. The expense includes such items as the maintenance and painting of separate equipment, separate employees, driver's uniforms, packing materials, address, telephone, advertising and office equipment. Most carrier agents who wish to remain affiliated to this van line would effectively be obliged to abandon their independent operating authority. The end result is fewer options to the consumer and less competition in general. NMSA has, in its comments filed in the case, urged the ICC to reject the proposed van line policy contained in an amended pooling agreement.

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[5] Docket No. MC-F-14784, The Applicabilty of 49 U.S.C. 11342 to Agreements Between Household Goods Carriers and Noncarrier Agents.

### ANTITRUST STATUS OF STATE COLLECTIVE RATEMAKING UNCERTAIN

A recent court decision (*U.S.* v. *Southern Motor Carriers Rate Conference*, 672 F. 2d 469 (5th Cir. 1982)) held certain state collective ratemaking activity to be in violation of Federal antitrust laws, on the grounds that the state legislature had not clearly exempted the associations from antitrust liability. In the opinion of NMSA, state legislatures should clearly exempt intrastate collective ratemaking from antitrust liability. Absent this liability, smaller movers will be unable to determine their costs and set competitive prices, given that they are unable to generate the necessary data. This is of interest to this Committee given your interest in reviewing the results of the Motor Carrier Ratemaking Study Commission.

This issue was discussed at the 14th annual meeting of the National Council of Moving Associations (NCMA) last week. NCMA is a NMSA affiliate organization of state associations of movers and warehousemen. NCMA provides a forum for close, continuous cooperation among the state associations. The annual meeting offers state association representatives an opportunity to share experiences and to discuss matters of mutual interest.

The sixteen (16) state associations in attendance (representing some 5,000 companies) unanimously passed the following resolution:

"A. That a moratorium be placed on Federal funds being expended to pursue antitrust violations involving collective rate making in any state where a state regulates the intrastate rate making procedures for motor cariers.

"B. That legislation be proposed that will preclude the FTC and/or the DOJ from initiating or intervening in any antitrust proceeding in any state where the state regulates its intrastate rate making procedures for motor carriers."

NMSA appreciates the complexity and sensitivity of the cited issue. Pending the outcome of the Motor Carrier Ratemaking Study Commission's efforts, we may be offering other more formal suggestions to deal with the aforementioned problem. We appreciate the opportunity now to bring this issue to the Committee's attention.

### THE FUTURE OF THE ICC?

In the past year, the ICC has been responsive to NMSA's suggestion for a National Advisory Committee to facilitate discussion and policymaking between the ICC and the industry. The NMSA suggestion to form a Committee was motivated by a desire to rectify the historical, adversarial-type relationship between the ICC and the industry. A number of meetings have been held and in general an informal approach is being taken to meet NMSA's concerns. NMSA commends the ICC for their support and looks forward to continuing the improved dialogue established in 1982. NMSA is concerned, however, about the lack of a clear cut direction on the future scope of the ICC's endeavors.

Much has been said in transportation circles about the question of "sunsetting" the agency. Budget cuts and various administration pronouncements seem to signal that preservation of the ICC is open to serious question. In addition, imminent recommendations of the Motor Carrier Ratemaking Study Commission may drastically change the role of the ICC. In light of this pattern, NMSA respectfully suggests that this Committee strive within its perogatives to clarify the outlook for the ICC and any counterpart Federal agency (i.e. Department of Transportation). Insights into the timing or scope of any policy or role changes for the ICC would enable the nation's moving and storage industry to better adapt in the marketplace. NMSA has yet to form a position on "sunsetting the ICC", but is very concerned that absent more precise directions from Congress and the Federal government, that industry operating decisions and practices will emerge that could be deterimental to a smooth regulatory transition. In other words, a clear Congressional regulatory thrust and policy with the ICC would significantly enhance our industry's planning and service to the public.

### CONCLUSION

The Household Goods Transportation Act is a balanced piece of legislation that is vital to the economic health of the household goods transportation industry and is of critical interest to the consuming public. As a result of the national economy, and inconsistent government policy (e.g. DOD vs. ICC), the implementation of the HHGTA has not been smooth. The largest difficulty stems from the rapid implementation of the Act. The NMSA survey, in combination with the ICC report, shows that movers have yet to fully adjust to the dramatic changes in pricing and services. The industry remains captive of the vacillations of the national economy, particularly interest rates and related housing developments. In light of this reality, clear and

unequivocal government regulatory policy is warranted. The moving and storage industry can and will adjust to the changing climates of the '80s. Strong Congressional and administration recognition of this will assure that the industry and the public benefit. NMSA respectfully requests that this Committee scrutinize our suggestions and thoughts regarding the self-haul industry, volume and discount pricing practices, agent/van line pooling arrangements, the role of the DOD, state ratemaking issues, highway user tax, and the future of the ICC. We would be glad to amplify on our statement.

## Survey Questions for the Oversight Hearing of the Household Goods Transportation Act

### REGULATORY BURDEN

In your judgement has the regulatory burden been reduced? Can you cite specific areas where the paperwork burden has been increased or decreased? Please evaluate the effect of any changes in terms of staffing, specific financial costs, etc. Cite the new regulations that have proven to be helpful or harmful.

### VOLUME DISCOUNTS

How has the widespread volume discounting affected your business? Have you witnessed any evidence of below-cost pricing or predatory rate setting?

### GOVERNMENT TRAFFIC

Since one of the primary goals of the Household Goods Transportation Act of 1980 is to reduce regulation by all federal agencies, it is important to evaluate the efforts of the Department of Defense in reducing regulatory requirements. During the past year have you noticed any initiative on the part of the military to lessen this burden? If not, can you give examples of how DOD regulations have affected your operations? Where has it proven the most costly? (i.e. new contracts, ratemaking.)

### AGENT-VAN LINE RELATIONSHIPS

How have the new or changed pricing, operating authority, and pooling arrangements affected your relations with your van line?

### BINDING ESTIMATES

What is your overall assessment of the use of binding estimates? Has it provided more flexibility in quoting estimates? Do you offer binding estimates?

### DISPUTE SETTLEMENT PROGRAMS

Have the dispute settlement programs proven useful? Has it proven to be a more expeditious and less costly method of settling claims? Has it served as a useful sales too?

### ENFORCEMENT

With the enactment of the HHGTA, the Interstate Commerce Commission's enforcement authority was strengthened by expanding its civil penalty capability. Have you witnessed any change in the Commission's regional enforcement efforts? (Has it increased or decreased?) Have you been involved in any spontaneous inspetions of operations? Are there areas of operations that are not being enforced?

### FINANCIAL PERFORMANCE

Have your moving revenues increased in the past year? Identify the factors responsible (i.e. increased competition, market shrinkage, regulatory relief or burden, increased marketing etc.).

## NMSA PRELIMINARY SURVEY RESULTS

| | Amount | Percent |
|---|---|---|
| Number of responses tabulated | 55 | ..... |
| Number of states represented | 25 | ..... |
| Number and percent seeing: | | |
| No change in the regulatory burden | 40 | 73 |
| An increase in the regulatory burden | 4 | 7 |
| A decrease in the regulatory burden | 7 | 13 |
| Number and percent asserting that volume discounts have had: | | |
| An adverse impact on the industry | 39 | 71 |
| A positive impact on the industry | 4 | 7 |
| No impact on the industry | 2 | 4 |
| Number and percentage seeing: | | |
| No change in the amount of military regulations | 28 | 51 |
| An increase in the amount of military regulations | 6 | 11 |
| A decrease in the amount of military regulations [1] | 1 | 2 |
| Number and percentage seeing: | | |
| No change in agent-vanline relationships | 15 | 27 |
| A change for the worse in agent-vanline relationships | 21 | 38 |
| A change for the better in agent-vanline relationships | 1 | 2 |
| Number and percent offering binding estimates | 36 | 66 |
| Number and percent regarding binding estimates as: | | |
| Harmful to the industry | 26 | 46 |
| Useful to the industry | 13 | 24 |
| Number and percent participating in the dispute settlement program | 4 | 7 |
| Number and percent asserting that the program is: | | |
| Useful to the industry | 2 | 4 |
| Not useful to the industry | 2 | 4 |
| Number and percent seeing: | | |
| No change in enforcement by ICC | 30 | 55 |
| A decrease in enforcement by ICC | 6 | 11 |
| An increase in enforcement by ICC | 1 | 2 |
| Number and percent experiencing: | | |
| A decrease in financial performance | 35 | 64 |
| An increase in financial performance | 8 | 15 |
| No change in financial performance | 7 | 13 |

[1] Twenty respondents did not reply to this question. Eighty percent of those that did (28/35) saw no change in the level of regulations.

Command to comply with the Household Goods Transportation Act and the Regulatory Flexibility Act.

The continuation of unnecessary rules and regulations sponsored by the ICC is evident in the new 10.56 regulations that cover the day-to-day operations of the moving industry. These new rules are really just a rehash of the old 10.56 rules. They require the industry's continued use of too much paperwork and documentation that result in added costs which carriers must pass on to the consumer. These regulations also result in the consumers receiving voluminous brochures, lots of documents, and paperwork that really tend to confuse shippers, rather than to educate them.

We constantly requested that the ICC consider a proposal that we made sometime ago that we called "Zero-Based Regulations." That doesn't mean zero regulations, but much reduced regulations from what we presently have. They were designed to reduce the paperwork and, at the same time, protect consumers from harm. We still think that zero-base approach to regulations merits some consideration.

The ICC's own report shows a marked reduction in consumer complaints. We recognize that this has been brought about by reduced shipping volumes in the last couple of years, and also the effects of various market conditions that result from that condition. But it has also been brought about by the improved operational flexibility that has been made possible by the act.

Although industry performance in terms of customer service has steadily improved over the last few years for all of the reasons we have mentioned, we can't help but wonder how much greater that improvement might have been had the ICC, in fact, adopted the policy and purposes of the Household Goods Transportation Act as its own.

It is clear to us, though, that we need less regulation, particularly now in this period of slow economy. Details of all that are in our written testimony, so I will not go into any more detail.

Our second concern is with the new rules for lease and interchange of vehicles. A substantial portion of the hauling, the actual providing of transportation services in our industry, is provided by owner/operators who are under contract to the agencies in our industry, rather than being owner/operators under contract directly to the van lines.

The change that is contained in these new leasing rules would require carriers to become responsible for the actions of other parties under contract with each other. These parties don't desire or need our interference. The new regulation is not needed in our industry. There has been no proof of such need by the ICC.

Our third concern is in the matter of the Military Traffic Management Command's continued use of their own carrier evaluation rating system that requires a detailed rating system on every single shipment. We wonder why we should have to grade the details of satisfactory service when reporting of poor service would really suffice. The labor and the paper used on 90 percent of the shipments could be saved.

The military had a system a few years ago that worked on an exception basis. It was a simple plan to penalize carriers that had serious or frequent service failures. Contrary to some remarks that

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were made earlier this morning, the General Accounting Office did a study on that CERS reporting system, and in their report they indicated that the CERS cost the public $3 million annually without any improvement in carrier performance. CERS is only one example, and we cited several in our testimony.

[The statement follows:]

STATEMENT OF RICHARD RUSSELL AND CHARLES IRIONS ON BEHALF OF THE AMERICAN MOVERS CONFERENCE

INTRODUCTION

Mr. Chairman and Members of the Subcommittee.

My name is Richard L. Russell. I am president of Aero Mayflower Transit Company, Indianapolis, Indiana and chairman of American Movers Conference Board of Directors. Accompanying me today is Charles Irions, president of the American Movers Conference.

The American Movers Conference, Inc.,[1] appreciates this opportunity to appear before the Subcommittee for its second oversight hearing on the impact of Public Law 96-454, the Household Goods Transportation Act of 1980.

In our testimony before the Subcommittee in October of last year, during the first oversight hearings on implementation of the Act, we expressed our serious concern over the manner in which the Act was being administered. Our testimony centered upon the perceived failure of the Interstate Commerce Commission and the Department of Defense to fulfill their obligations under the Act to reduce unnecessary regulation.

In the year that has followed, the situation has not changed and these agencies continue to ignore or give inadequate attention to the policy objectives of the Act.

EXCESSIVE GOVERNMENT REGULATION CONTINUES TO HAMPER REALIZATION OF THE GOALS ESTABLISHED UNDER THE HOUSEHOLD GOODS TRANSPORTATION ACT OF 1980

Congress by enactment of the Household Goods Transportation Act provided clear direction to the Interstate Commerce Commission and other federal agencies as to the future scope of operating regulation it envisioned for household goods carriers. This direction from Congress was sorely needed, for in its absence the moving industry was faced with unnecessary, overburdening paperwork and operating requirements which ill-served both consumers and movers.

In giving effect to its finding that extensive regulatory interference with the day-to-day operations of motor common carriers of household goods was responsible to a large extent for the ills then afflicting the industry, Congress directed the Interstate Commerce Commission and other responsible federal agencies to minimize their regulation of household goods carriers to the fullest extent possible consistent with the complementary goal of consumer protection, and to rely instead upon the competitive forces unleashed by other provisions of the statute granting carriers greater operational flexibility.

Unfortunately, these agencies have chosen to ignore this directive, and excessive regulatory interference in the day-to-day operations of the household goods moving industry remains the order of the day more than two years after enactment of the Household Goods Transportation Act.

INTERSTATE COMMERCE COMMISSION CONTINUES TO FAIL TO FOLLOW THE INTENTIONS OF CONGRESS TO EFFECT SUBSTANTIAL CHANGE IN ITS APPROACH TO REGULATION OF THE HOUSEHOLD GOODS MOVING INDUSTRY

*Regulations governing industry-consumer relations*

The Interstate Commerce Commission has stated clearly on a number of occasions that its broad policy in response to the Motor Carrier Act and the Household Goods Transportation Act is the reduction of regulation and the encouragement of greater

[1] American Movers Conference, Inc. is a national trade association of the household goods moving industry, representing carriers and agents of all sizes on whose behalf it customarily appears in proceedings before the Interstate Commerce Commission, the courts, and other federal agencies. Its members transport over 90 percent of the household goods moved in interstate commerce. It is a non-stock, non-profit, corporation organized and existing under the laws of the District of Columbia, with offices at 400 Army-Navy Drive, Arlington, Va. 22202.

reliance on market forces. But that policy has not yet been applied consistently and appropriately to the regulation of household goods motor carriers.

At last year's oversight hearings, the American Movers Conference testified to the industry's disappointment at the failure of the Interstate Commerce Commission to accomplish a meaningful reduction in regulation for movers. Specifically, the Commission had been directed in Section 6 of the Act to review and revise all of the household goods carrier operational regulations with the view towards achieving the very minimum of regulation consistent with consumer protection.

The best overall illustration of the Commission's failure to appreciate what Congress had in mind was seen in the proposed regulations the Commission announed very shortly after the Act was signed, ostensibly in response to Section 6. The Commission subsequently rejected the industry's suggestion that instead of the proposed "band-aid" approach, a fresh start from a zero-based concept was needed to cure the maladies of the existing regulations. We believe our "zero-based" regulatory approach more accurately reflected the goal of Congress to achieve minimum regulation by identifying those areas appropriate for regulation where there is a need for shipper protection, while leaving other areas that do not have a serious potential for consumer harm to carrier responsiveness through enhanced competition.

As detailed in our statement submitted before this Subcommittee in 1981, the final operational rules adopted by the Commission gave only an illusion of change. The industry has been operating under the new rules since December 1981, and we are more convinced than ever that the Commission needs to take another look at the industry's zero-based approach to regulation.

Without repeating the numerous references made in last year's testimony to specific requirements under the Sub 36 rules, we believe it is appropriate to cite a few more examples of how the Commission errs in its current approach to "minimized" regulations (references are to Title 49 of the Code of Federal Regulations):

"(1) 1056.2, Information for Shippers. In the guise of improving regulation, the commission rewrote the pamphlet it requires each carrier to give a prospective household goods shipper. Unfortunately, in at least two places, the shipper is affirmatively misled. The document, labelled Publication OCP-100, states that a carrier may not impose additional charges beyond those specified in a binding estimate. The statement ignores the fact that carriers are permitted to add charges for services not included in the estimate. Similarly, the description of non-binding estimates fails to note that the rule requiring delivery on payment of 110 percent of the estimate amount is inapplicable when storage is involved, whether or not storage was contemplated at the time the estimate was completed. The publication further implies that a carrier must always provide a shipper 24 hours advance notification of delivery, when under the regulations such notification need be provided only upon request. Each of these problems, along with others, has required a substantial amount of carrier time in explaining to shippers that the "official Commission Publication" is wrong. It is difficult to conceive how the public interest is being served when the Commission not only requires dissemination of erroneous information, but then fails to correct its own errors after they have been pointed out.

"(2) 1056.4, Final Charges on Shipments Subject to Minimum Weight or Volume Provisions; 1056.5, Order for Service. The commission requires that each Order for Service contain any minimum weight or volume charges applicable to every shipment. These minimum charges must be referred to on every Order for Service, even where a separate estimate of charges is provided the shipper. The carrier is thus required to perform a useless exercise which does little more than add to the carrier's cost of doing business.

"(3) 1056.7, Determination of Weights. The commission requires that the weight ticket contain both the tractor and the trailer number of the truck being weighed. "Only the trailer is essential to this process, so long as the tractor has not been changed. In addition, both the name of the shipper and the carrier's registration number are required to be noted on the ticket, when only one of those ought to be sufficient for proper identification."

Despite the failure of the Interstate Commerce Commission to adopt the fundamental objectives of the Household Goods Transportation Act of 1980 as their own, and despite the extensive regulatory interference which thus continues to afflict the day-to-day operation of the industry, motor common carriers of household goods have nonetheless managed significant strides toward eliminating or alleviating the toublesome conditions which prompted passage of the statute. Nowhere is this progress more evident than in the improvements in service and resultant increase in consumer satisfaction accomplished by the industry during the Act's brief existence, as evidenced by the following averages for the top thirteen household goods carriers, representing approximately eighty percent (80 percent) of all household goods shipments during this period:

INDUSTRY AVERAGES FOR TOP 13 CARRIERS [1]

| | 1979 | 1980 | 1981 |
|---|---|---|---|
| Shipments | 932,477 | 850,526 | 815,867 |
| Percent of estimates within ±10 percent | 45.9 | 52.1 | ([3]) |
| Percent of shipments picked up on time | 95.8 | 97.3 | 97.7 |
| Percent of shipments delivered on time | 88.4 | 92.3 | 94.1 |
| Percent of shipments with no claims or claims less than $50 [2] | 81.3 | 80.0 | 92.8 |
| Average time to settle a claim | 26.0 | 25.2 | 24.0 |
| Percent of shipments without an ICC complaint | 98.0 | 98.3 | ([3]) |

[1] North American, Allied, United, Mayflower, Atlas, Bekins, American Red Ball, Global, Lyon, Wheaton, Burnham, Fernstrom, and National.
[2] 1981 figure shows percent of shipments with claims less than $100.
[3] Not available.
Source: ICC Carrier Performance Reports.

The significant gains evidenced by the foregoing statistics can be attributed to the fundamental changes effected under the Household Goods Transportation Act of 1980.

Simply stated, Congress was right. Increased service competition, made possible by the operational flexibility afforded carriers and the improved performance data afforded consumers under the Act, has allowed the industry to accomplish in two years what heavyhanded bureaucratic interference was unable to accomplish in more than a decade. Thus, even though the agency cooperation called for under Section 6 of the statute has thus far failed to materialize, Congress' rejection of the traditional regulatory approach in favor of increased reliance upon free market forces has been proved correct, and the industry is happy to report that the Household Goods Transportation Act is working.

The industry, however, cannot help but wonder how much greater the gains would have been, and how much further the industry could have progressed in its efforts to provide efficient and effective service to the consuming public, had the Interstate Commerce Commission in fact adopted the policy and purposes of the Household Goods Transportation Act as its own.

It should be noted at this juncture that the current Commission has evidenced a greater degree of sensitivity to carrier needs than its predecessors. This subtle shift away from the adversarial stance of the past is evidenced by, among other things, the current measure of reasonableness and restraint which characterizes Commission enforcement of its existing operational regulations.

Undoubtedly, the improvements in service and shipper satisfaction noted above are to some extent attributable to this increased willingness on the part of the Commission to grant carriers some measure of the operational flexibility contemplated under the statute. Nevertheless, it is the position of the American Movers Conference that the ultimate success or failure of the Household Goods Transportation Act should not be allowed to rest upon the momentary temperament of individual Commissioners. Particularly in light of the continued intransigence of the Department of Defense, which will be discussed later in this statement, it remains clear that further Congressional action is required if the fundamental objectives of the Household Goods Transportation Act of 1980 are to be realized.

As a start, the Subcommittee should give careful consideration to the "zero-based" regulatory approach previously proposed both to the Interstate Commerce Commission and this Subcommittee by the American Movers Conference. Under this approach, the Commission and other responsible regulatory agencies would be required to justify each and every regulation adopted as essential to the protection of the shipping public, and leave to correction by the marketplace those aspects of carrier operation which do not pose serious potential for consumer harm.[2] A zero-based approach is particularly warranted in view of the "business as usual" response by the ICC and DOD to the existing directive of Section 6 of the statute.

The AMC plans to petition the Commission in the near future for a review of the Sub 36 operational regulations. We would hope the current Commission will be

[2] Requiring federal agencies to weigh carefully the impact of regulatory requirements by cost-benefit analysis is a central theme of the regulatory reform bill approved by the Senate and currently being considered in the House. If a cost benefit analysis was made of the Commission's current Sub 36 rules, a drastic reduction would be clearly justified.

more responsive than its predecessors to consideration of a zero-based methodology to accord with the minimum regulation objectives of the Act.

*Leasing regulations for owner-operator contracts*

Another example of the Commission's continued opposition to Congress' mandate to reduce regulation is found in two recent Commission decisions, Ex Parte No. MC–43 (Sub No. 7A) and Ex Parte No. MC–43 (Sub No. 13), dealing with rules modifications for lease and interchange of vehicles. These proceedings adopted additional regulations for carriers and their agents in connection with leasing contracts negotiated with owner-operators.

The decision in Ex Parte No. MC–43 (Sub-No. 7A) lease and interchange of vehicles (leases involving carrier agents), is particularly onerous as it establishes a new regulatory obligation for carriers to ensure their agents comply with the Commission's leasing rules in dealings with owner-operators who may handle shipments under the carriers' authority. Mover/agents with no interstate authority will for the first time be subjected to the Commission's complex leasing rules. Effecting compliance with this new obligation will inevitably result in a new layer of regulation by requiring carriers to oversee the terms of contracts their agents negotiate with their own owner-operators.

The owner-operator plays a significant role in the household goods moving industry. But his position, both now and in the future, cannot be divorced from the economic realities which surround his utilization. In many respects, the owner-operator has found a niche in the industry simply because he is an efficient, conscientious operator. Any substantial increase in the cost, whether direct or indirect, of utilizing the services of owner-operators will, however, undercut this efficiency and seriously jeopardize his future within the industry. There is nothing sacrosanct about the owner-operator's role in the trucking industry. He will survive or not survive as a competitor in a tough market. If the owner-operator has problems today, it is but a product of being part of an industry thrown into the vigors of competition during a less than vigorous national economy.

The Commission's stated rationale for the additional regulations is to protect owner-operators and assure their continued participation in surface transportation. We are concerned that the Commission's actions are a poor substitute for the natural workings of the marketplace and may hinder rather than aid the owner-operator's relationship with carriers and their agents.

If the Commission is attempting sincerely to protect the owner-operator, it is appropriate to ask why the fuel surcharge, a direct benefit to the owner-operator, was eliminated. Additionally, we might question why the Commission has approved contracts and volume discounts which result in sharply decreased revenues to owner-operators. Although the rules adopted apparently were well-intended, it is curious that by enacting these current regulations and creating new regulatory impediments, the Commission is in effect actually encouraging carriers not to use owner-operators.

Ex Parte No. MC–43 (Sub No. 7A) is a prime example of costly, burdensome, unnecessary regulation. Regulation 1057.12(n) requires the carrier to ensure that owner-operators, under contract to agents, whose equipment is being used to provide transportation on behalf of the carrier, receive all rights and benefits due an owner-operator under the leasing regulations. This regulation is a perfect example of a rule being implemented without the slightest conception of the practical matters involved.

In the first place, the carrier has no way of knowing which drivers or agents are owner-operators. The carrier basically has a lease agreement with the agent for equipment and a driver. It does not know, nor can it tell, whether the driver supplied by the agent is an owner-operator or an employee of the agent. In order to determine whether the drivers are owner-operators or not, the carrier would have to continuously inspect/audit all the agents with whom it has lease agreements. The carrier would have to examine all contracts between agents and owner-operators and determine the method of compensation. The carrier would now be infringing upon the contractual rights of the parties. The leasing regulations also require that the owner-operator be paid within 15 days after submission of the necessary documents. Since the 15-day period begins to run on the date the necessary paperwork is submitted, it is practically impossible for the carrier to audit the papers, pay the agent, and the agent then pay the owner-operator, all within 15 days.

Some questions arise in connection with this requirement. What if the agent requires the owner-operator to submit the paperwork direct to him and in turn he submits the paperwork to the carrier? Does the 15-day period begin to run when the paperwork is submitted to the agent or to the carrier? In either event, it would be

extremely difficult, if not impossible, for the carrier to control the owner-operators' payment within 15 days. The agent may not be in a financial position to pay the owner-operators in advance. Many agents are small independent businesses and are not able financially to pay until they receive payment from the carrier.

These additional regulations add unnecessary costs and burdens on the carrier to police their agents, and in effect, infringe upon the contractual rights between the agents and their owner-operators without a demonstrated need for such intrusion. The Commission, in promulgating these regulations, has not taken into account that each agent, as an independent businessman, has his own procedures and methods of operations with his owner-operators. If they do not want to deal with the agents or carriers' procedures, owner-operators are free to contract with other agents or carriers. The procedures and methods of operations between the agents and owners have been nurtured over many years, and are working effectively. To change past procedures that are working effectively, to conform to some impractical ideal without any showing of a need for change, is the height of folly. With economic conditions and competition as they currently are, it is not the time to enact such regulations. Before changes are made to a system that has historically worked effectively to a system that may or may not work, a showing of great need for the change must be made and a study of the consequences of such changes on the carriers, agents and owner-operators must also be made.

In Ex Parte No. MC-43 (Sub No. 13) the Commission has added further unnecessary regulations. The new requirements in essence put the Commission in the role of judge and arbiter to determine any legal disputes regarding contractual obligations between carriers and owner-operators. In rule 1057.12 the Commission added a performance clause that would, in effect, give judicial authority to the Commission to determine legal issues. This attempt to usurp the functions of the judicial system through a rulemaking proceeding is unnecessary and inappropriate, particularly in light of the proposals for future sunsetting of the ICC. It is our belief that disputes regarding contractual obligations and the performance thereof should be resolved in its proper forum—the judicial system. The Commission is already attempting to apply leasing regulations to terminated owner-operators who are no longer functioning in the transportation industry when there is a dispute between the parties. If the parties cannot reach agreement, it then becomes a matter for judicial review, not for an arbitrary decision by the Commission.

The current leasing regulations in 49 CFR 1057 are not without problems of their own. A combination of impractical regulations and Commission interpretations have made compliance with the regulations very difficult, if not impossible. For example, regulation 1057.12(d) requires the lease state that the carrier has exclusive possession and control of the equipment during the lease. Owner-operators are independent contractors and their tax status depends upon meeting certain conditions. One of the conditions for independent contractor status is that they must have control over how they will carry out their assignments. If the carrier states in its lease that it has exclusive possession and control, can the owner-operator still satisfy the conditions of an independent contractor, or would he be classified as an employee with all the resultant ramifications? Owner-operators are justly proud of their independent contractor status and do not want to be classified as an employee of a carrier.

Regulation 1057.12(1)(5) requires the carrier to pay interest on escrow funds at least quarterly. We agree with that rule. However, the Commission takes the position that this interest must be paid to the owner-operator quarterly, even though he has requested that the carrier credit the interest to his escrow account so that it, too, can accumulate interest. We believe this interpretation is unreasonable, and is an act of strictly enforcing a regulation for the sake of that regulation.

The Commission has failed to consider the industry practice of giving advances to owner-operators that average 50% of their linehaul revenue on an assigned but not yet bonded shipment. This practice provides the operator with the operational and other funds prior to his performance.

Regulation 1057.12(g) requires that the lease specify that payment to the lessor be made within 15 days after submission of the necessary delivery documents. The Commission has taken the position that this rule applies to terminated owner-operators. Regardless of whether there are reasonable disputes between the carrier and owner-operator concerning the amount owed, or whether the owner-operator will owe money to the carrier subsequent to the 15-day period, the Commission's position is that all funds must be released within the 15 days. We believe that it is unreasonable to require a carrier, on the threat of violation of the rules, to release funds to a terminated owner-operator within 15 days of receipt of the paperwork when there are disputes between the parties, and where the owner-operator will owe money to

the carrier subsequent to the 15-day period. A reasonable time should be allowed to settle any disputes and clear up any indebtedness.

We do not believe that the additional regulations propounded by the Commission are necessary; nor are they within the mandates of the Motor Carrier Act and the Household Goods Transportation Act of 1980. Before any additional regulations are enacted, we believe that a need must be shown. They must be cost justified and a study must be made to determine the consequences on all parties. We also believe this same procedure should be followed with the existing regulations, so that we can truly eliminate all unnecessary regulations and reduce paperwork.

The new leasing regulations are virtually impossible of compliance and cannot be cost effectively justified by the Commission. The carriers cannot afford the tremendous cost of auditing third-party contracts and payment procedures between agents and operators.

The owner-operator contract system within the household goods segment of the motor carrier industry has been working efficiently and satisfactorily for a number of years. Although well-intentioned, the majority at the Commission simply do not understand the impact these new rules will have on those affected by them. In a dissenting opinion to Ex Parte No. MC–43 (Sub No. 13), Commissioners Sterrett and Andre state . . ." the Commission should be taking steps to reduce regulation in ways which will benefit not only the owner-operator but the consuming and shipping public as well . . . Rather than adopting more regulations, we should be eliminating regulatory impediments." The American Movers Conference strongly endorses these sentiments.

We believe it is clear that the household goods moving industry must be exempt from these new regulations which run counter to the directions given by Congress in the Household Goods Transportation Act.

#### THE FAILURE OF THE DEPARTMENT OF DEFENSE TO COMPLY WITH THE WILL OF CONGRESS

One of the primary objectives of both the Household Goods Transportation Act and the Regulatory Flexibility Act of 1980 (Public Law 96–354) was to reduce regulatory requirements and administrative paperwork. Section 6(b)(3) of the Household Goods Transportation Act and the House report specifically direct the Department of Defense to actively pursue this objective. Likewise, the Regulatory Flexibility Act requires Federal agencies to anticipate and reduce the impact of rules and paperwork requirements on small businesses. The Department of Defense denies the applicability of the Regulatory Flexibility Act provisions to its rulemaking activities. That position will be discussed later in this statement.

*Household Goods Transportation Act*

The Department of Defense and its subagencies charged with the regulation of household goods transportation on behalf of the United States government have as yet failed to so much as acknowledge their concomitant obligation under Section 6 of the Act to reduce regulatory interference in the daily operations of the moving industry. Our testimony at last year's oversight hearing strongly confirmed the Department of Defense's failure to comply with the Household Goods Transportation Act. During the ensuing year, the situation has only worsened. We offer the following examples in support of that judgment.

In 1976 the Military Traffic Management Command, which is responsible for managing the movement of personal property (household goods) for the Department of Defense personnel, discarded a workable and relatively simple quality control program and replaced it with a complex, burdensome program called the Carrier Evaluation and Reporting System (CERS). At that time the industry went on record as opposing the new system which required considerably more paperwork and administrative effort on the part of the Defense Department and the industry.

The previous quality control program was basically a "management by exception" procedure. In other words, Department of Defense traffic managers maintained performance data only on problem shipments. If a trend of unsatisfactory service developed, the carrier was notified and warned that deficiencies in its operation must be corrected. Failure to correct deficiencies resulted in carrier suspension or disqualification from doing business at that installation for a specified period of time. This system worked well.

Under the CERS program a rating form is prepared on every domestic shipment and the shipment receives a numerical score. Copies of the rating form, which is prepared in four copies, are provided the carrier and its agent. Carriers who fail to maintain a specified minimum average score during a six month period at a military installation are disqualified from receiving shipments at that installation for 60 days. Because of the scoring system, rating forms must be prepared and distributed

for shipments which moved without incident as well as those on which deficiencies were noted. Thus, the "management by exception" principle was replaced by a costly and voluminous paperwork system.

In 1981 the Military Traffic Management Command realized the CERS program was far too complicated. At that time they had the opportunity to cancel CERS and revert back to the former quality control system which requires much less administrative cost and effort. However, they elected not to do that. Instead, in 1982 MTMC revised the CERS program to make it simpler for installation transportation offices to administer. Industry again made its objections to the entire program known to MTMC. The simplification merely made it easier to determine numerical scores. However, it did not reduce paperwork in any way whatsoever. Literally thousands of unnecessary pieces of paper are still prepared, distributed, stored, and ultimately destroyed annually.

Earlier this year the General Accounting Office completed a review of the CERS program. One of their findings should be of interest to you:

"DOD's personnel costs alone for processing CERS paperwork are about $3 million annually. Since MTMC cannot attribute any improvement in carrier performance to the CERS program, we question whether DOD can justify such a costly paperwork exercise."

Another example is the MTMC proposed system for filing intrastate rate tenders which is scheduled to be implemented nationwide in October 1983. A few states have deregulated the transportation industry. MTMC had to revise their intrastate rate filing procedures to conform with conditions in those few states. Even though the majority of the states have not deregulated, MTMC now plans to impose the new procedure on the regulated states too. Apparently, for the sole purpose of attaining uniformity, changes are to be made in a system that is already working well and for which universal changes are not required. Industry has expressed its opposition to MTMC. Time and money are being expended to revise a procedure that does not need revision. To repeat the often quoted phrase, we feel that MTMC is "trying to fix something that ain't broke." It is interesting to note that in June 1980 instructions for filing intrastate rates were contained in ½ of one page of a single 26 page document which prescribed procedures for filing both interstate and intrastate rates. The proposed new procedure for filing intrastate rates only consists of a 23-page filing instruction document plus an additional 148-page rate solicitation document which is actually a separate nationwide intrastate tariff prepared by MTMC. This action cannot in any way be construed as a reduction in paperwork.

Another example is the revised pack and crate contract. This contract, used primarily for preparation of unaccompanied baggage in lots of 200-400 pounds for movement, was expanded in 1982 from 41 pages to approximately 140 pages. Much of this expansion is due to the inclusion of a quality assurance procedure which requires use of a complicated random sampling technique. Although this procedure is appropriate for large-scale assembly line production of hardware items or clothing items, the relatively simple tasks required of a pack and crate contractor certainly do not justify such a complex surveillance and sampling system.

Military traffic managers at the various installations frequently either do not understand the programs described above or do not have adequate personnel resources to implement the correctly. This is both frustrating and costly to carriers. In order to protect their own interests, carriers must be aware of all the regulations; must understand them; must monitor their implementation by military traffic managers; and must initiate appeals to installations or to higher headquarters to rectify errors which have adverse impact on them.

We have no doubt that DOD personnel are conscientious and dedicated to executing their responsibilities. However, something must be done to change the philosophy that problems can only be solved by expanding an existing regulation or imposing a new one.

*The Regulatory Flexibility Act (RFA) and its application to the promulgation of rules by the Department of Defense*

It goes without saying that the regulatory reform movement has spawned numerous legislative landmarks for the household goods motor carrier industry. One of the most important for the moving industry, which is composed almost entirely of networks of small business entities, was the Regulatory Flexibility Act (RFA) passed in 1980 to encourage Federal agencies to utilize innovative administrative procedures in dealing with small businesses.

The RFA as it amended the Administrative Procedure Act (APA) has as its main purpose the goal of tailoring rules promulgated by regulatory agencies to the size and resources of those affected by them. The threefold purpose of the RFA is to en-

courage agencies toward analysis, communication and realistic adoption of their rules affecting small business. The Act requires agencies to analyze the impact of their rules on small business, to communicate these burdens by publishing them in the Federal Register, and to consider less burdensome regulatory methods. The Act and the process it requires aim toward improving the regulatory environment for small entities.

The Department of Defense takes the position that it does not issue regulations that are subject to the Act. We believe that insofar as its procurement rules are concerned, DOD errs in its refusal to comply with the RFA. As a result, the benefits of the RFA has not been realized by household goods carriers and agents providing moving services to military members.

DOD advances several arguments for its broad exemption from the Act, the most discussed rationale being that every function it undertakes, including procurement of all goods and services, is a "military function" which is exempted from the public notice and comments procedures of rulemaking under the APA.

We disagree with this position because both the legislative history of the APA and common sense dictate that Congress meant "military function" in the traditional sense of the word. The act of procurement is clearly not a military function as it relates to the purchase of transportation services for the personal effects of military members.

Our view in this matter is supported by the U.S. Small Business Administration and the Chairman of the House Small Business Committee.

CONCLUSION

The express purpose of this oversight hearing is to ensure that the Household Goods Transportation Act of 1980 is being implemented according to Congressional intent and purpose. This is a duty that Congress has chosen to impose upon itself and is now law. If that duty can be discharged by a mere public hearing, then the Act will inevitably fail to achieve its express objectives. Congress must give corrective guidance, otherwise a department or agency not contradicted by the authorizing committee following an oversight hearing will assume that it has carried its burden under the law and will continue on the wrong course.

We are grateful for the opportunity to express our concerns today. It is our strong belief that the course being pursued by the Department of Defense and the Interstate Commerce Commission in purported accordance with the provisions of the Household Goods Transportation Act is not merely inadequate but counterproductive. Under these circumstances, affirmative direction from the Congress is needed to ensure that the goals of the Act are indeed attained. To that end, we respectfully request that the Senate Commerce Subcommittee on Surface Transportation direct that the Department of Defense and the Interstate Commerce Commission administer the law as written and as Congress intended to minimize regulation of the household goods motor carrier industry to the maximum extent feasible.

Senator DANFORTH. Thank you very much.

With respect to the paperwork problem that each of you has mentioned in your testimony, do you have some method of dealing with the ICC to express your concerns and your complaints on a continuing basis?

Mr. Taylor stated that his door is open and that he wants to have a continuing process. Do you feel that that is in existence now, or can the ICC improve on that in some way?

Mr. RUSSELL. As Chairman Taylor stated this morning, the ICC has exhibited a lot of intentions to cooperate. The open-door policy has definitely been in effect. We have had every opportunity to sit and talk with Chairman Taylor and members of his staff.

There have been indications all along that changes are forthcoming to reduce the paperwork, but we really have not seen them yet. We are looking forward to them.

Dr. RUANE. I would like to, again, state for the record that the current Commission, all the Commissioners have clearly had a very open policy with this industry, and we commend them for it.

I think the issue that we are talking about with paperwork was dwelt on in the exchanges you had a few minutes ago with the earlier witnesses. It is a question of a separate approach being taken by the DOD to the implementation of the act. The incident that was cited was finally resolved through a legal interpretation, but I think what we are here to say is that this needs to be looked at.

Why is it necessary to have two different approaches? You, yourself, dwelt on the example where the service is the same. The working circumstances of the individual may be different, but there is no reason why we can't have the same rules.

Senator DANFORTH. On the question of discounts of which you spoke, Dr. Ruane, why would you think that discounts are predatory?

Dr. RUANE. We think they are potentially predatory because larger carriers have the services to offer such programs to their clientele whereas a small carrier cannot. These kinds of practices are quite prevalent today, and they are becoming almost commonplace. As a result, it puts the small mover at a tremendous disadvantage.

We can't cite specific evidence at this point that this is having a predatory effect, but we think the potential is there. We encourage this committee to urge the Commission to really get into that relative to the MC-166 proceeding.

Senator DANFORTH. Do you have anything to add, Mr. Russell?

Mr. RUSSELL. Not on that subject.

Senator DANFORTH. With respect to the effect of the new law on small shippers, do either of you have any reason to believe that the effect is different between large shippers and small shippers? Has this act been a boon to one and not to the other?

Mr. RUSSELL. It would take a long time to really answer that one fully, but at the present time in our industry, pricewise, supply and demand is really what is setting the price today. With the economy in the situation it is today, there is an oversupply of capacity to provide service. That is pushing rates down for big shippers in a number of different ways—volume discounts, contract carriage arrangements. Some individual shippers are getting reduced rates through binding estimates.

The situation may turn around when the economy turns around, but we don't really know that at this time. I think the dangerous aspect of it is, in our industry, and you alluded to it a little bit in your example about the two different moves, there really is not economy of scale in the trucking industry, and that is going to continually keep rates at the lowest possible level, I believe.

When the economy turns around, if the situation doesn't change, when there is less capacity than there is demand for the service, the situation will need to be addressed specifically.

Senator DANFORTH. I am not sure I followed the answer. The previous witness, when asked, said that he does not as yet know the difference, if any, in the effect of the act on small carriers and large carriers. He wanted to reserve judgment on that.

Mr. RUSSELL. I think there is potential harm for both. In the case of the small carrier and the small agent, there is probably less opportunity for them to diversify their businesses. The larger carriers, like my company, have ongoing programs to continue to diversify in order to lessen their dependence on a single line of business

that is now subject to a rate situation that may not be favorable in the long run. The small carrier has less opportunity to do that.

Dr. RUANE. Mr. Chairman, I would submit very strongly that there has been a very distinctive difference in impact between the large carrier and the small carrier. Our own survey results, preliminary as they are, when combined with our day-to-day experience and earlier studies, including financial ratio studies we do every year on surveying our membership, would indicate that the small agent is clearly suffering more so than the larger carriers as a result of the current discounting practices, and as a result of the current national and regional economic situations. This combination of factors makes it is clear to us, in any event, that the small agent is suffering disproportionately.

Senator DANFORTH. Gentlemen, thank you very much.

Dr. RUANE. Thank you, Mr. Chairman.

Next we have Mr. Cornish Hitchcock.

## STATEMENT OF CORNISH F. HITCHCOCK, DIRECTOR, TRANSPORTATION CONSUMER ACTION PROJECT

Mr. HITCHCOCK. Thank you, Mr. Chairman.

On behalf of TCAP, I appreciate the invitation to be here this morning. I would like to summarize our testimony in basically three parts—the good news, the bad news, and some recommendations for the future.

The good news is that which some of the other witnesses have mentioned; namely, the availability of binding estimates, guaranteed service programs, full value liability protection, various discounts, and the establishment of an informal dispute resolution system. Those are the sorts of reforms which Congress intended, and we are delighted to see that they are taking place over time.

The bad news, if you will, is the fact that we are still getting too many consumer complaints about the sort of things that Congress wanted to address when it passed this legislation. Some of the reforms are really not spreading as far or as quickly as we would like. Let me just focus on two in particular.

Binding estimates is one. According to the ICC figures in the preliminary assessment, only about 15 to 20 percent of all moves will be carried on a binding estimate this year, and one carrier, Beckens, is principally responsible for almost all binding estimates.

We still continue to get complaints from people who get a very low estimate and find, when they get to the other end, that they have got to pay several hundred dollars more. One example I cited in the testimony is a woman from Spokane, Wash., who thought she was going to get a $1,200 move, and in fact it turned out to cost $2,000. She hired a lawyer. The lawyer wrote to the van line and got back a form letter saying, "We can't pay this claim because it would be discrimination. It is the sort of thing that is illegal."

Frankly, that is the sort of thing that was supposed to be ended by the statute, and as long as we have people who are continuing to receive these types of low-ball estimates, but forced to cough up all the extra money, the reforms really have not gone far enough, and we think further change is necessary.

The other item I would like to focus on is the dispute resolution system. As has been mentioned, two plans have been adopted by the trade associations. We are pleased that they are in effect and that they have been so widely adopted. The problem is—and it is still too early to evaluate how they work in practice—that they are limited just to loss and damage claims.

As we read the statute as it was passed 2 years ago, the idea was that this would resolve the entire dispute, not leave shippers in the position where they have to take some claims to arbitration and some claims to litigation. That is not terribly efficient, and it really keeps the consumer in some of the bind that he or she was in before the passage of the statute.

We understand that the industry hasn't had much experience with this particular plan yet. As time goes on, they may feel more willing to bring more claims under the arbitration umbrella. But this is one thing that has to be closely monitored because it relates to what I think Chairman Taylor mentioned, the fact that consumers don't have anyone to go to bat for them.

What they really do need is an ability to resolve individual problems with the carrier, short of litigation. The arbitration plan, we thought, is a good way of balancing the scale and giving them the mechanism to do that. We hope that it will work and that more and more complaints will come under that particular umbrella.

One thing, I think, that has been mentioned is the fact that consumer complaints are down. Frankly, we don't think that that is a particularly good barometer of the nature of consumer problems, just because there are so many outside variables that could affect the total number—fewer people are moving, the ICC cut out its consumer hotline, and also the fact that the consumer booklet now says to call the mover directly.

What I have mentioned in the testimony as far as further reforms, I would like to focus on three in the area of ICC "sunset," as has been mentioned in the airline industry already, and elsewhere.

As far as licensing and entry, we think there should just be a fitness standard. Let a carrier prove that it is able to meet insurance and safety standards; that is the sort of responsibility that could be transferred over to the Department of Transportation.

As far as rates, one of the single most important reforms would just be abolishing the antitrust immunity for collective ratemaking. Frankly, we really see no reason why movers should continue to be able to set their rates the same way that OPEC oil ministers set world oil prices, particularly when you have the problems with nonbinding estimates that I have mentioned. There is just no excuse for continuing this really extraordinary special protection for this particular industry.

Finally, one area that might be transferred elsewhere is, the ICC's consumer protection or antitrust type of responsibilities.

That concludes my time, and I will stop there. Thank you.

Senator DANFORTH. Thank you, Mr. Hitchcock.

On the binding estimate situation, what remedy do you suggest for the problem that you have noted?

Mr. HITCHCOCK. The remedy on that, I think, is just getting carriers away from collectively setting their rates, to force each carrier to offer estimates which are based on the carrier's individual costs.

That will achieve price certainty which is something that consumers have wanted.

Senator DANFORTH. Ending antitrust immunity would be sufficient to do what? If that were done, would there be more binding estimates?

Mr. HITCHCOCK. There would no longer be the established rate bureau level for nonbinding estimates. Each carrier would then be free, or in effect required to look at his own costs and to rely more on estimates.

Part of the problem here is the fact that there seems to be resistance to offering binding estimates either from the agents or from the industry. The current mechanism allows a mover to go out and make, in effect, a low-ball, nonbinding estimate and to collect the full established rate. That does not provide much incentive to come in with accurate estimates.

One of the reasons why there has not been greater reliance on binding estimates is, I think, the nature of the market as well. People make one-time-only moves, and after 40 years or so, people are not really aware of the fact this legislation has taken effect, and they still think that all movers are pretty much alike.

Senator DANFORTH. I am not sure how the antitrust situation works into the binding estimate.

Mr. HITCHCOCK. A binding estimate is based on each carrier's own costs. They send their estimator out to look at it, and that person makes a particular choice. The way a nonbinding estimate works, there is a particular rate based on how many miles you are traveling, and what the mileage is. Those are the sorts of rates which are set across the board for moves on all participating carriers. The idea was that there would be equal moves for equal rates.

If you get carriers out of the business of sitting down to discuss collectively what is the "correct rate" for each and every move, then there would be requirements to set the rates on an individual basis.

The problem with nonbinding estimates is that I could call up three movers, I could get nonbinding estimates for $800, $900, $1,100, and each mover could still charge $1,300 because that is the collectively established rate. So what is the incentive to come in and say, "We think it is $1,300, and that is what you are going to be charged." The customer may say, "$1,300 is too much, I will go with the guy who offered me $800," and then find out, when he or she gets to the other end that they have to pay $1,300.

A system which places more reliance on the individual estimator going out and basically sticking with the figure that he or she gives to the shipper would have a lot more impact on competition, both price competition and also taking some of the nasty surprises out of finding out that the rate is much higher when you get to the other end. It would save some of the problems such as weight-bumping, that are also prevalent.

Senator DANFORTH. Thank you very much, sir.

Mr. HITCHCOCK. Thank you.

[The statement follows:]

STATEMENT OF CORNISH F. HITCHCOCK, DIRECTOR, TRANSPORTATION, CONSUMER ACTION PROJECT

Chairman Danforth, Members of the Subcommittee:

On behalf of the transportation Consumer Action Project (TCAP), I appreciate the invitation to testify this morning at this annual oversight hearing on implementation of the Household Goods Transportation Act of 1980. TCAP is a nonprofit consumer organization whose members include 15 consumer groups in 14 states. We testified before this Committee during its consideration of this Act, as well as during consideration of the Motor Carrier Act of 1980 and the Bus Regulatory Reform Act of 1982. In addition, we have appeared before the Interstate Commerce Commission in proceedings of interest to consumers, and we have provided informational material to the public regarding household goods moving and other transportation services where consumers are direct purchasers of such services.

When TCAP and other consumers groups supported the enactment of reforms contained in the Household Goods Transportation Act, it was with the hope and expectation that increased competition and reduced ICC regulation would help remedy some of the major problems faced by consumers in making a move: inaccurate estimates; a lack of price competition; poor service, including failure to pick up or deliver goods in a narrow time frame; and inadequate claims procedures.

In assessing the progress made on these fronts over the past few years, there is some good news and also some bad news to report. The good news is that a number of the reforms which Congress envisioned when it enacted this legislation have started to come into being. Specifically, I am referring to the fact that binding estimates are now available to shippers, as all major and many smaller carriers have moved to give customers price certainty; far from providing this quality service at a higher price than the established formula for non-binding estimates, an ICC staff study suggests that the binding estimates offered by the five largest van lines are at or below the established tariff level. There have also been a few innovative pricing plans, notably senior citizen and volume discount plans. In an effort to improve service quality, some carriers offer "guaranteed service" plans under which the company will pay a specified sum, usually around $100 a day if it does not pick up or deliver one's goods during the specified period. To take some of the sting out of loss or damage claims, there is also the possibility of obtaining full value liability protection, which allows shippers to recover the replacement value of lost or damaged goods, rather than simply the depreciated value. Finally the establishmentl of an informal dispute resolution system, to which all major carriers and a number of smaller carriers participate, which is designed to facilitate the settlement of loss and damage claims without the consumer having to go to court.

That is the good news. The bad news is that these sorts of reforms have not spread widely throughout the industry, where there seems to remain resistance to taking advantage of all of the opportunities made available under the Act. For instance, binding estimates remain the exception, not the rule, and will be used in only about 20 percent of all moves this year, according to ICC staff estimates. While Bekins pioneered by offering binding estimates and now makes them available as a matter of course unless a customer requests a non-binding estimate, there has been resistance from the four larger van lines, which let their agents "elect" to make a binding estimate if one is sought by the customer. Perhaps this is not surprising, considering the fact that many shippers are one-time-only customers who may not realize that binding estimates are available for the asking and the fact that many in the industry remain enamored of weight-and-mileage-based rates which are collectively set under a virtually unique grant of immunity from the antitrust laws.

Also, some of the reforms that have been implemented are not problem free, at least from the shipper's standpoint. Take, for example, the concept of guaranteed service, with a penalty if the carrier does not pick up or deliver your goods within the specified period of time. While some carriers have established a penalty of $100 or $125 for every day the company is late, we understand that some carriers have made such penalties into an absolute limitation on the mover's liability, even if the actual harm suffered by the shipper as a result of the delay exceeds that sum. Moreover, some carriers are paying such penalties only for delays that are caused by the moving company, not by any third party.

As for dispute resolution, we are pleased that two principal trade associations have drafted and received ICC approval for their dispute settlement programs, and that a number of carriers have decided to participate. We are disappointed, however, that these programs are limited only to loss and damage claims. As we read the Act, it was Congress' intent that such dispute resolution programs be available to resolve all elements of a dispute which may arise between a shipper and a mover,

not just one phase of it, the loss and damage element. We hope that as the industry gets more experience with dispute resolution, it will be more inclined to extend the program to cover other claims as well. Unfortunately, it is still too early to evaluate how the existing programs are working in practice, but we would urge you to continue to monitor this area to see if the goal of improved claims procedures is becoming a reality.

On balance, then, the reforms which have flowed from the Act are certainly welcome, but they are still comparatively few, and many consumers are not realizing the benefits of increased competition. I realize that consumer complaints received at the ICC are down dramatically, but such figures are a poor barometer of consumer satisfaction, especially in light of the ICC's removal of its consumer hotline, the fact that the ICC's information pamphlet encourages consumers to contact the mover, and the larger demographic trend away from frequent relocations, which is likely to be heightened in a recessionary economy.

Take, for example, the problem of inaccurate estimates. Not so many years ago, inaccurate non-binding estimates were, on an average, too low 50% of the time and too high 50% of the time. According to the most recent survey compiled by the ICC, however, nearly half (46%) of the estimates given were still too low often forcing customers to scramble to come up with the extra money to get their goods off the truck. Let me give just one example of a complaint we recently received, which should illustrate that things are not all that rosy. A woman who had moved out to Spokane, Washington had a non-binding estimate from a mover for $1200. After the goods were weighed and delivered to her new home in Spokane, however, the mover insisted on receiving $2000 in payment. She retained a lawyer who complained to the company, and he got back a form letter which indicated that the $2000 claim had to be paid in full, because if it was not paid, the company would be guilty of discrimination, which is illegal under the Motor Carrier Act. This excuse is a bit lame, since to our knowledge the ICC has not recently brought any suits against firms which charge the estimated price instead of the rate bureau price. In fact, one of the reasons why binding estimates were legalized was to get away from this system which protects movers from treating their customers fairly. It seems to us that as long as shippers are experiencing problems of this sort, as long as movers are using ICC regulation as an excuse to avoid fair dealings with their customers, then further reform is necessary.

As you know, TCAP strongly advocated reform of ICC regulation of this industry during the last Congress. Based on what we have seen over the past two years, there can be no doubt that regulatory reform can work if given the chance. What the public needs at this stage is more reform, if the benefits which Congress intended are to be widely available to consumers.

In this connection, we understand that the Reagan Administration may send to Congress next year a bill that would essentially abolish or "sunset" ICC regulation of the motor carrier industry, and transfer those functions which Congress believes should be retained to another agency, in most instances, the Department of Transportation. This is the model in the Airline Deregulation Act of 1978, which is to take effect once the Civil Aeronautics Board is abolished in 1985, and this Committee should consider applying this approach to the household goods industry as well in the next Congress. As the example I just cited indicates, there are cases in which ICC regulation is used to protect movers from their customers, not to protect customers from the movers.

How could ICC sunset of this industry be effectuated? What reforms would be appropriate? Let me suggest an approach with respect to the Commission's major functions in the key areas.

### FITNESS AND LICENSING

At present, carriers must prove their "fitness," i.e., their ability to comply with federal safety and insurance requirements. In addition, it must be shown that granting the application would not be "inconsistent with the public convenience and necessity." We believe that the "public convenience and necessity" test could be simply abolished, and responsibility for assuring compliance with safety and insurance standards be shifted to the Department of Transportation's Bureau of Motor Carrier Safety, which is responsible for setting standards in these areas anyway. This is the model for the airline industry after the CAB is gone, i.e., airlines will generally be required to have a certificate from the Federal Aviation Administration showing compliance with its safety standards without regard to a CAB certificate which specifies where the airline can operate.

I would note in this regard that ICC Chairman Taylor has recommended lowering the "public convenience and necessity" standard to a less demanding "public interest" test, and in fact, Congress adopted such a provision in the Bus Regulatory Reform Act of 1982. The problem with this approach is that it still entails a lot of bureaucractic paper shuffling in the processing of applications, which only serves to delay the introduction of new service to the public. In addition, a "public interest" standard can be just as vague as the "public convenience and necessity" standard, and it is subject to re-interpretation as the membership of the Commission changes over time. Considering the Congress's reluctance in recent years to give agencies a blank check of discretionary authority, we believe that the best approach would be to allow "fit" carriers to offer service as they choose without regard to any "public interest" or related inquiry. If movers can prove that they can comply with federal and safety insurance requirements, that should be the extent of federal licensing requirements.

RATEMAKING

The Motor Carrier Act of 1980 abolishes antitrust immunity for collective setting of motor carrier rates, including those in the household goods moving industry, effective 1 January 1984. Congress should go further and lift antitrust immunity across the board, especially for collective action on general rate increases. We see no reason why movers should be allowed to set their rates the same way that OPEC sets world oil prices. Such collective ratemaking would be illegal for non-regulated industries, and this single reform would most effectively inject more competition into the industry to the benefit of the public.

CONSUMER PROTECTION

The Commission has established certain consumer protection standards, set forth at 49 C.F.R. Part 1056, and the authority to issue and enforce such regulations, as well as the authority for monitoring and approving dispute resolution plans, could be transferred to the Federal Trade Commission, or, as an alternative, the Department of Transportation. This approach would essentially put movers in the same position as "non-regulated" companies, which are free to choose what services they want to offer in particular markets and at what price, but which are still subject to the antitrust laws and to antitrust-type federal regulation of unfair, deceptive and anti-competitive practices under the FTC Act.

This approach is fully consistent with the goal of replacing ICC "cartel" regulation with marketplace competition, as even Adam Smith recognized that market failures do occur. The traditional remedy for such failures in this country has been the enactment of antitrust laws or antitrust-type regulations of the sort administered by the FTC. I should add that this approach was proposed by the leadership of the Senate and House Aviation Subcommittees when they drafted CAB "early sunset" legislation earlier in this Congress. Under those bills, the CAB's present authority to regulate unfair, deceptive and anti-competitive practices would go to the FTC, and that model is fitting here, since the ICC's regulations were intended to remedy similar types of consumer abuses, e.g., weight-bumping, failing to make pick-ups or deliveries within the promised time frame, etc.

I should add as a footnote to this point that one of our disappointments with the ICC over the past two years is its failure to adopt performance standards, which were contemplated by the Act and which would serve to guide the Commission in prosecuting those movers who were the worst offenders in terms of failing to meet these consumer protection rules on a regular basis. One of the significant reforms of the Act was the increased power it gave the Commission to pursue such chronic offenders, but so far the Commission has not shown much interest in exercising its power in this area.

In closing then, we believe that some of the reforms which Congress intended have come to pass. These changes have been gradual, however, and there are still too many consumers who are not fully benefitting from the greater competition and improved service options that many hoped would follow in the wake of this statute. That is why we encourage Congress to go further than it did in 1980 and to enact further reforms which would phase out the way in which the ICC presently regulates this industry.

That concludes my statement. I will be happy to answer any questions you may have. Thank you.

Senator DANFORTH. Next we have Ronald Sibila, and John McBrayer.

## STATEMENTS OF RONALD R. SIBILA, PAST PRESIDENT, MAYFLOWER WAREHOUSEMEN'S ASSOCIATION; AND JOHN McBRAYER, MOVERS' AND WAREHOUSEMEN'S ASSOCIATION OF AMERICA, INC.

Mr. SIBILA. Thank you, Mr. Chairman.

By way of explanation, I am Ron Sibila, and I am President of People's Cartage of Massillon, Ohio. We are a diversified trucking company, providing services of warehousing, intermodal transportation, regular trucking, and also we are agents for Aero Mayflower Transit Co., with agencies in Massillon, Ohio, Canton, Ohio, and Parkersburg, W. Va.

I am here today representing the Mayflower Warehousemen's Association, which is an organization made up exclusively of agents for the Aero Mayflower Transit Co., as such, we are independent, small businessmen. Many of us are family-owned organizations, some of us in the second and third generation. We probably generated somewhere in the area of $175 million of transportation services last year.

We have sort of a dual interest in these proceedings. First of all, we are the ones that provide the service for the van lines. We are the ones that own the equipment. We are the ones that pay the drivers and the helpers, and many times we are also bound by Teamster contracts. Also, many of us have our own operating authority. So the final implementation of this act really does affect us.

We have three areas of concern. Our most serious concern is in the area of volume discounts for the large shippers and the military. Section 10741 of the act prohibits discrimination, but what appears in the statute certainly is not in practice. It is usually the van lines that intiate these discounts, and then for competitive reasons, the agents must follow suit.

We have no control or say over these discounts. We are the ones in Massillon, Ohio, and Canton, Ohio, that are actually providing these services at reduced rates, and we are the ones that must meet the payrolls.

We also want to go on record here as supporting collective ratemaking. Many times we have as many as four different agents involved in a single move. It would be practically impossible for each of us to generate our own rates. Many of us don't even have the sophistication or the know-how to do it. So we must have some organization, some method of accumulating this cost data in order for us to stay in business.

I think what we all forget is the fact that we do have the right of independent action. So any time that these rates would get out of line competitively, I am sure that the van lines would certainly take independent action and have in the past. The proponents of doing away with collective ratemaking really have a lack of knowledge, in my estimation, of our day-to-day operating services.

Our final area of concern is in the area of the leasing regulations that will go into effect at the end of this year. I don't think they have considered the intermittent or short-term lease by the agent to the van line, especially as it relates to the driver and some of the paperwork. Also the new rules will cause a severe conflict in

maintaining the independent contractor status for owner/operators.

So the small businessmen, our MWA members, are vitally concerned with the direction of our Nation's transportation system, as we take pride in offering regular, nondiscriminatory, quality service at reasonable rates to our customers, and we hope that this subcommittee will give some considerations to our views.

[The statement follows:]

STATEMENT OF RONALD R. SIBILA, PAST PRESIDENT, MAYFLOWER, WAREHOUSEMEN'S ASSOCIATION

My name is Ronald R. Sibila, 1979 President of the Mayflower Warehousemen's Association. I am also the owner of three local moving companies located in Massillon and Canton, Ohio and Parkersburg, West Virginia, all of which are agents for the Aero Mayflower Transit Company.

The Mayflower Warehousemen's Association (hereinafter referred to as "MWA") is an Indiana Not-for-Profit Corporation originally chartered by the State of Indiana on February 6, 1935. Its principal and only office is located at 9247 North Meridian Street, Suite 120, Indianapolis, Indiana 46260. Membership in MWA consists exclusively of the agents of the Aero Mayflower Transit Company, Inc. (hereinafter referred to as "Transit Company"). MWA is a voluntary association, i.e. all agents electing to become a member in MWA do so on a voluntary basis. Termination of membership in MWA is also by voluntary action on the part of the individual member, or only for cause by MWA.

It is important to the submission herein that this Subcommittee know the general overall background and facts of the member-agents who compose this association.

*(a)* Each member-agent is an independent businessman, acting as an agent for the Transit Company;

*(b)* In 1981, the member-agents generated "dollar volume" in sales in excess of $175,000,000 (One hundred seventy five million dollars);

*(c)* Member-agents are small businesses, mostly family owned, who represent the Transit Company in every state of the United States and in foreign countries, and in every major metropolitan city of the United States;

*(d)* Member-agents must depend upon their "moving business" and its corresponding regulations for their livelihood and their destiny.

Therefore, our member-agents do have a great interest in, and concern with, the Interstate Commerce Commission's implementation of the Household Goods Transportation Act of 1980 and these Congressional Oversight Hearings.

The purposes and objectives of MWA as set forth in part of its Bylaws include: "To act, suggest, and assist on behalf of its members concerning . . . rules and regulations . . . before State and Federal agencies; that will be in the best interest of the agent-member, and the industry as a whole . . ."

Therefore, MWA has the Corporate authority to submit this written Statement on behalf of its members.

A number of MWA's members have a "dual" interest in these Oversight Hearings before this Subcommittee and the final Rules adopted by the Commission in that (a) they are providing interstate hauling for the Transit Company and (b) many have ICC authority in their own name and stead.

The Rules adopted by the Commission "greatly affect" each and every agent-member of MWA. They are the individuals and companies who "actually perform" a great deal of the moving services rendered to the public and are therefore, seriously affected by the outcome of these Rules and the implementation of the Act.

Additionally, the member-agents can be and are assessed for fines and penalties resulting from non-compliance with technical violations of the Rules of the Commission. Therefore, it is vitally important this Subcommittee recognize and understand the final Rules adopted by the Interstate Commerce Commission must also be reasonable and applicable to the agent.

VOLUME DISCOUNT RATES

The most serious concern we have today is the plight of the small businessman/agent in a market place where large volume shippers, such as the military or certain national accounts, are able to demand and extract considerable rate concessions from the industry.

Almost every MWA member is classified as "small Business" under the current size standards of the Small Business Administration (SBA) and, as such, many do not have the financial resources or capabilities to withstand a lengthy "rate war". This continued practice may offer "short-sighted" bargains, but it will most certainly lead to a long-term destructive impact on small agents and carriers alike.

This practice of "enhanced competition" will not only be destructive for the small agent, but it has already produced discriminatory pricing to the general public. The ICC's approval of discount rates for multiple shippers without appropriate cost justification is discriminatory to the consumers and, therefore, inconsistant with the intent of the Household Goods Transportation Act to protect individual shippers.

Section 10741 of the Act prohibits discrimination between shippers as it relates to like traffice moving under similar circumstances. What appears in statute is not in practice. It is possible to move two or more shipments on the same van, over the same routes, with identical weights, and yet, charge different rates of sometimes disparaging amounts. The difference can be considerable in situations where binding estimates were given, or even under non-binding estimates when comparing the "volume rates" a military or large national account shipper might receive as compared to an individual shipper.

Additionally, we strongly believe three important components of the amended National Transportation Policy are being ignored or overlooked. These three elements require:

(1.) Encouragement of sound economic conditions in transportation, including sound economic conditions among carriers;

(2.) Encouraging the establishment and maintenance of reasonable rates of transportation without unreasonable discrimination or unfair destructive competitive practices; and

(3.) Enabling efficient and well-managed carriers to earn adequate profits.

It was for these very same reasons that a National Transportation Policy was adopted and the trucking industry was regulated by Congress in 1935. Discriminatory pricing and service and its destructive impact on the industry and the general public caused sufficient concern and public outcry for regulation and a sense of orderliness.

We do not believe it was the intent of Congress, in passing the Household Goods Transportation Act of 1980 and the Motor Carrier Act of 1980, to desire a departure from the "common" and publiclyminded business concepts which established the patterns of regulation we live with today. Furthermore, we do not believe that businesses dealing directly with the pulbic such as airlines, hotels, and the moving industry should be permitted to turn away or pick and choose customers at will, including individual pricing as the current market bears.

### COLLECTIVE RATEMAKING

In passing the Motor Carrier Act of 1980, Congress requested the formation of a Study Commission to review and investigate the feasibility of retaining or dismantling the present collective ratemaking system for all motor carriers as it relates to all single and/or joint-line rates. The Motor Carrier Ratemaking Study Commission is to provide an indepth report of its findings to Congress very shortly.

MWA would like to go on record again as a strong supporter of continued collective ratemaking for the household goods moving industry. Our industry is truly unique in that shipments do not move consistently between the same or similar points and that much more than just basic transportation is involved. Many services such as packing, unpacking, appliance servicing, etc. are performed at origin and destination by local moving companies who are generally agents for an interstate carrier. This necessitates cost accumulation and collective ratemaking to permit profitable, competitively-priced services in all phases of a move.

In addition, as many as four different agencies may be involved in a given shipment (booking agent, origin agent, hauling agent, and destination agent). Involvement of all of these different agencies demonstrates the need for a coordinated network to move household goods as opposed to thousands of moves attempting to operate autonomous of one another. One could imagine the chaos if all agents operated independently in establishing rates. Since moving rates are not "single-factor", but will vary in accordance with the services selected by the shipper, the moving industry must have coordinated rates for through services. However, it must be remembered that carriers do maintain the right of independent action to take care of individual situations.

The household goods moving industry, to a large extent, deals with unsophisticated shippers who have had little or no prior experience with motor carrier transpor-

tation. Unlike traffic managers of large corporations, these shippers do not understand tariffs and transportation law. Household goods tariffs developed collectively, contain many rules protecting the interests of the shipper. They clearly define services and prices which the unsophisticated shipper cannot understand. These shippers would be totally confused by hundreds of different rate levels and we would find it virtually impossible to keep current with all the rule and price changes filed in individual tariffs.

Collective ratemaking was instituted to protect shippers and stabilize the transportation industry by eliminating predatory pricing and the potential harm of rate wars. These practices, over a period of time, can drive many agents out of business, which would result in reduced competition, higher overall rates and a reduction in available service.

For the above and other reasons, MWA believes the continuation of collective ratemaking is in the best interest of shippers, carriers, agents and the public.

LEASING REGULATIONS

The Interstate Commerce Commission has issued a final order in Ex Parte No. MC-43 (Sub-No. 7A), "Lease and Interchange of Vehicles (Leases Involving Carrier Agents)," served June 30, 1982, which will greatly affect the leasing rules between carriers and owner-operators "regardless of presence of agent". The date for compliance is now set for December 31, 1982.

If this rule becomes effective, Section 1057.12(n) will have a unique application to most local moving and storage companies, such as MWA members, who serve as agents for a carrier. An important function of these agents is to supplement the carrier's fleet by leasing equipment on a temporary basis to them, especially in the peak Summer months. These temporary or intermittent leases are operative through a provision of the Commission's leasing regulations, 49 C.F.R. Section 1057.12(d)(3), which is applicable only to household goods carriers. This provision allows household goods motor carriers to lease equipment, which the agents use in their own service when it is not required by their principal carrier. Pursuant to this special provision, some agent-drivers operate infrequently, while others may operate full-time or primarily in a principal carrier's service.

The result of the application of Section 1057.12(n) to agents' intermittent lease drivers is to create substantial ambiguity and indefiniteness as to the obligations of principal carriers to these drivers, particularly those who operate seldom or infrequently for the principal carrier. This situation is compounded by the absence of guidelines for compliance with this regulation in regard to intermittent lease drivers.

In order for carriers to meet compliance with these leasing regulations adopted by the Commission, carriers may be forced to become somewhat involved and knowledgeable of the confidential lease agreements that agents have contracted with their owner-operators. Should carriers become involved in the private affairs and daily operation of their agents, it will create an adversarial relationship between the two. Furthermore, we question the ability of a carrier to infringe upon the contractual rights of an agreement strictly between an agent and his/her owner-operators.

The current leasing regulations found at 49 C.F.R. 1057.12(d) requires the lease state that the carrier has exclusive possession and control of the equipment. This provision creates a severe conflict for the owner-operator in that he must have control over how to carry out their assignments in order to maintain their independent contractor status for tax purposes. If a carrier should be required to have this so stated in all lease agreements with their owner-operators, then it may result in these independent contractors being reclassified as employees and subject them to all the resultant ramifications.

The fifteen-day payment rule is not only impractical, but is totally unnecessary in its application for the household goods moving industry. It is quite common in our industry for carriers and agents to advance monies to their owner-operators for shipments that are loaded, but not yet delivered. We believe this rule will cause agents to reconsider the situation and perhaps abandon this practice of advancing operational funds to their owner-operators.

MWA believes this regulation is not only impractical for the agent and carriers, but it will be extremely costly to implement. Additionally, this Rule will result in an increased layer of regulation when Congress has clearly intended the Act to reduce or eliminate the burdening regulations and paperwork to the maximum extent feasible. In fact, the Commission did not show an adequate need for such a regulation, nor did they note a single, specific complaint against the leasing practices of household goods carriers or agents when it proposed to adopt this Rule.

MWA requests this Subcommittee investigate the background and nature of this proceeding and its unique application and effects upon the household goods moving industry and the small businessmen/agents. MWA hereby requests this Subcommittee intervene in this matter and that the Interstate Commerce Commission be directed to exempt the household goods moving industry from these regulations.

CONCLUSION

The Household Goods Transportation Act of 1980 mandates that appropriate authorizing committees of Congress shall conduct periodic Oversight Hearings on the effects of this legislation, no less than annually for the first five years following the date of enactment of this Act, to ensure that this Act is being implemented according to Congressional intent and purpose."

Most MWA members are small, independent businessmen/agents who take pride in being an integral part of this nation's transportation system and being able to offer regular, non-discriminatory and quality service at equitable and reasonable rates to all customers. We are vitally concerned with the three issues addressed in this Statement, and respectfully request this Subcommittee give careful consideration to the thoughts and concerns expressed herein.

Mr. McBRAYER. I am Mr. McBrayer, Mr. Chairman, and I represent the Movers' and Warehousemen's Association of America and its member carriers.

Our written statement includes four headings, the first of which is I intend to, in the interest of time, not address, although it is important and I am sure that that will be looked into as statement is considered.

The second item has to do with volume discounts and predatory rates. We submit that the language of Household Goods Transportation Act, in section 10721, that household goods rates for the U.S. Government shall not be predatory, is clear, and also that rates that are 48 and 64 percent discounts on the transportation and the packing, the Government rate tender, which is in itself a reduction in the tariff, do require investigation.

Moreover, we respectfully submit that standards, or at least guidelines must be established lest the industry be destroyed by the excesses of certain of its members. No carrier can sit idly by and let its investment go down the drain, and meets a rate which is really noncompensatory in order to keep that investment from floundering totally.

It is the purpose of regulations, as we see it, to curb these excesses lest the public interest suffer the loss of that service, or the service deteriorates to a point of no return, from discriminating unjustly against the individual shipper most in need of regulatory protection, and to a point of no return from other unfair and destructive competitive practices.

With respect to joint ratemaking, there are two points that we wish to bring out. The membership of the Movers' and Warehousemen's Association is comprised mainly of small businesses. Loss of collective ratemaking to the small but good transportation companies deprives them of the professional skills which are needed to determine costs. The crafts and skills required for performing a good moving service are not necessarily the crafts and skills needed to determine costs and rates.

To deny small movers the benefits of professional rate bureau assistance in the development of compensatory rates could result in a different rate for each move, as we see it, and with movers under-

cutting on each move until a handful of movers are left, and thereafter the traffic would be charged whatever it would bear.

The second point with regard to joint ratemaking is this, we submit respectfully that nothing is gained by dividing responsibility and power between two or more Federal agencies, as would happen with the elimination of antitrust immunity. You would have, on the one hand, the ICC responsible to the Congress for efficacy of transportation and, on the other hand, no responsibility on the part of either Justice Department or the Federal Trade Commission for the efficacy of the transportation.

The objectives of the Justice Department and the Federal Trade Commission are not to transportation but elsewhere. Too many hands on the controls could eliminate first, we think, the small businessmen. Smaller businesses in the transportation industry are too important to be forgotten, overlooked or left to the indifference of rival agencies.

This brings me to the fourth matter, namely, the jurisdictional dispute between the Department of Defense and the Interstate Commerce Commission over the reweighs, which has had some discussion already. Our written submission treats this matter in detail.

An informal ruling by the Commission's staff was rejected by the Military Traffic Management Command, the single-management agency for the Department of Defense which is responsible for surface transportation. The Commission disavowed its staff's informal ruling, which asserted jurisdiction. The matter is now pending before the courts.

It would seem to us that the act would not be so hard to comprehend, that any uncertainty should now exist as to the Commission's jurisdiction over the transportation rules governing carriers' practices as distinguished from rates that were removed from the Commission's purview.

I thank you, Mr. Chairman, and we will try to answer any questions you may have.

[The statement follows:]

STATEMENT OF JOHN MCBRAYER ON BEHALF OF THE MOVERS & WAREHOUSEMEN'S ASSOCIATION OF AMERICA, INC.

Mr. Chairman and members of the committee, my name is John McBrayer. I am here on behalf of the Movers' & Warehousemen's Association of America, Inc. and its member motor carriers.

I

The Movers' & Warehousemen's Association of America, Inc. ("Association") is a non-profit corporation. Its approximately 400 members are regulated motor common carriers transporting household goods in interstate commerce. The Association carries out three basic functions:

(a) It provides and disseminates information on regulatory and economic matters affecting the moving industry;

(b) It participates in regulatory proceedings on behalf of its member movers; and

(c) It publishes tariffs of rates and charges for member movers pursuant to a collective ratemaking agreement approved by the Interstate Commerce Commission ("Commission").

While there are members of the Association who hold national authority comparable to that of the major van lines, the members of the Association are primarily small carriers whose operating authority is geographically limited. These small independent movers have managed to survive in the face of intense competition from

the large national van companies, because they have provided responsible, efficient and economical service to the public.

II

The Motor Carrier Act of 1980 and the Household Goods Transportation Act of 1980 had as their purpose the reduction of regulation and increase in competition for the household goods moving industry and the trucking industry in general. The Commission, in its implementation of these Acts, has disregarded this obvious intent.

*Regulatory burden*

The Household Goods Transportation Act of 1980 specifically directs that the regulations and paperwork required of motor common carriers of household goods be "minimized to the maximum extent feasible consistent with the protection of individual shippers." [49 U.S.C. Section 11110(a)]. In addition to failing to alleviate burdensome paperwork in its Revised Operational Regulation and Performance Standards for the household goods moving industry [MC-19 (Sub No. 36)], the Commission has also increased the burden of paperwork by applying the fuel surcharge regulations to the moving industry.

As finally adopted by the Commission in Ex Parte No. 311 (Sub No. 4), the rules for the motor carrier industry relating to increased fuel costs were applied to all trucking companies, including movers. This completely disregards the Commission's finding in Ex Parte No. 311 (Sub No. 5) that the moving industry was unique in its owner operator arrangements and required separate rules for a fuel surcharge. This proceeding was later discontinued.

The household goods moving industry is unique within the trucking industry in its utilization and reliance upon owner operators. The fuel surcharge program as adopted by the Commission is disruptive to the carrier/owner operator relationship.

Under the previously existing fuel surcharge program, a fixed percentage was added to the transportation rate for the increased cost of fuel. The percentage amount was then paid directly to the owner operator. This program was simple for the carrier to administer and easy for the owner operator to understand and verify the amount to be received.

The fuel surcharge program adopted by the Commission has none of these advantages. Pursuant to that program, a percentage is taken off the line haul transportation rate and retained by the carrier. The carrier then applies a complicated mileage formula to determine an amount to be paid to the owner operator. The amount actually paid to the owner operator bears no relationship to the percentage amount retained by the carrier. Since owner operators do not have access to the Mileage Guides required in the computation of the mileage formula, it is impossible for an owner operator to verify that the amount paid by the carrier for fuel is in fact correct. This leads to distrust and confusion between the carrier and owner operators.

In addition to its impact on the owner operator, the new fuel surcharge program creates a substantial bookkeeping burden to the carrier. Detailed records must now be kept of how each van is dispatched, from point to point. A clerk must then determine the mileage between each of the points and apply it to the mileage formula to determine the amount to be reimbursed to an owner operator. It has added a needless layer of paperwork to the already burdensome record-keeping requirements of the household goods moving industry.

Contrary to the directives of the Household Goods Transportation Act of 1980, the Commission has taken a simple procedure for reimbursement of fuel costs to owner operators and has made it complicated to compute, difficult to understand and burdensome to administer. The uniqueness of the moving industry should be recognized and household goods carriers should be allowed to pay their owner operators the fuel fold-in revenue without regard to the dispatched mileage formula required by the Commission.

*Volume discounts and predatory rates*

The Motor Carrier Act of 1980 amended Section 10701 of Title 49, United States Code, by adding the following new section:

"(e) In proceedings to determine the reasonableness of rate levels for a motor carrier of property or group of motor carriers of property, or in proceedings to determine the reasonableness of a territorial rate structure where rates are proposed through agreements authorized by section 10706(b) of this title, the Commission shall authorize revenue levels that are adequate under honest, economical, and efficient management to cover total operating expenses, including the operation of leased equipment and depreciation, plus a reasonable profit. The standards and pro-

cedures adopted by the Commission under this subsection shall allow the carriers to achieve revenue levels that will provide a flow of net income, plus depreciation, adequate to support prudent capital outlays, assure the repayment of a reasonable level of debt, permit the raising of needed equity capital, attract and retain capital in amounts adequate to provide a sound motor carrier transportation system in the United States, and take into account reasonable estimated or foreseeable future costs."

The Commission has disregarded its responsibility to review rate levels to insure the adequacy of revenue to carriers. In November 1981, the Committee for Lawful Rates filed a petition with the Commission seeking a declaratory order proceeding to review the lawfulness of volume discount rates and aggregate tender rates. In its petition, the Committee for Lawful Rates argued that the financial viability of the motor carrier industry and the ability to maintain an adequate interconnected system of motor common carriage were in serious financial jeopardy as the result of the widespread practice of various rate discounts. It was pointed out that the National Transportation Policy, as established by the Motor Carrier Act of 1980 [49 U.S.C. Section 10101(a)(4)] requires the Commission to regulate motor common carriers in such a way as to "* * * encourage the establishment and maintenance of reasonable rates for transportation without unreasonable discrimination or unfair or destructive competition." As required by 49 U.S.C. Section 10701, as cited above, the rates are also required to be reasoanble and bear a rational relationship to the carrier's cost and be generally compensatory.

In January 1982, the Association also filed a petition seeking a declaratory order from the Commission to institute a proceeding to determine the legality of various volume discounts and pricing practices in the household goods moving industry. Despite these requests for investigation into the predatory rate practices within the trucking industry, the Commission denied the petition of the Committee for Lawful Rates and has failed to respond to the petition filed by the Association.

Further, the Commission has ignored the directive in the Household Goods Transportation Act of 1980 [49 U.S.C. Section 10721] that "* * * rates for the transportation of household goods for the United States government shall not be predatory." In October 1981, several household goods carriers and agents requested the Commission in Suspension Numbers 70606 through 70616 to suspend and investigate certain tenders filed with the Department of Defense under 49 U.S.C. Section 10721 which contained transportation rates that were between 48 percent and 64 percent of the Government Rate Tender. The Commission took no action either to investigate the rates or to establish guidelines. Some specific guidance is required either from the Commission or Congress to determine what constitutes a predatory rate.

The Commission's failure to respond to specific requests for investigation into rate practices can only be interpreted as a virtual abdication of its rate regulatory authority. The Commission must be required to exercise its authority in this area and to administer the law as it is written to prevent predatory rate practices which may completely undermine the motor transportation industry.

Joint ratemaking

For the most part, the member carriers of the Association hold authority from the Commission which is limited in its geographic scope. These small independent movers are a major component in maintaining a strong, viable and competitive household goods transporation industry.

For these small independent movers, the collective ratemaking process is essential to their operations. These carriers lack the experience and expertise necessary to develop an individual tariff. The accounting systems of the small mover lack the sophistication necessary to compile the data required to develop a compensatory rate for their operations. The collective ratemaking process makes available to these carriers the consultants and economic analysis necessary to publish a tariff in the competitive environment of the moving industry.

By providing some measure of stability within the rate structure, the collective ratemaking process provides continuity of service. The small carrier is able to provide quality service while being insured of earning a compensatory rate. This enables the small carrier to make long range investment plans for such capital investments as the replacement of equipment.

The elimination of antitrust immunity for collective ratemaking would be detrimental to the public interest. The resulting proliferation of individual tariffs would lack standardization and uniformity between tariffs. This lack of uniformity would lend itself to the development of deceptive practices since it would add to the general confusion of the individual shipper.

Further, the elimination of antitrust immunity for the collective ratemaking process will jeopardize the existence of the small independent carrier. These carriers provide quality, dependable service to shipping public and are a vital factor within the moving industry. Because of their limited operational scope, these carriers lack the resources necessary to develop an individual tariff that will be competitive while at the same time allowing adequate earnings. The elimination of antitrust immunity for collective ratemaking would further encourage the large national van lines to engage in even more drastic rate competition than already exists. The small carrier, lacking the expertise to compete in such a cut throat, competitive environment would be eliminated from the market. Without the small independent carrier, the household goods transportation industry would be monopolized by a few major van lines. Such concentration of service is clearly contrary to the public interest and the National Transportation Policy and was never contemplated or intended by the Motor Carrier Act of 1980 and Household Goods Transportation Act of 1980.

*Jurisdictional dispute*

Early in 1982, a jurisdictional dispute arose between the Commission and the Department of Defense. This dispute involved the application of the Commission's regulations for the household goods transportation industry [MC-19 (Sub No. 36)] to household goods traffic for the Department of Defense.

Because of this jurisdictional dispute, movers involved in the transportation of household goods traffic for the Department of Defense are compelled by the regulations of the Department of Defense to disregard certain requirements of the Commission's household goods carriers regulations. The Commission was requested to clarify the application of its regulations.

By letter dated March 10, 1982, J. Warren McFarland, Director of the Commission's office of Compliance and Consumer Assistance, wrote to the Military Traffic Management Command stating that it was his view that "all interstate motor carriers of household goods operating under authority granted by the Interstate Commerce Commission was required to comply with the requirements of 49 C.F.R. 1056 to the extent that the rules, as adopted, are applicable to certain types of shipments." Despite this initial support of the carriers' position, the Commission subsequently issued a statement disavowing Mr. McFarland's opinion.

In order to clarify which agency regulations take precedence, a lawsuit was instituted. While this lawsuit remains pending, the carriers involved are forced into a position of disregarding and violating the Commission's regulations in order to comply with Department of Defense regulations and participate in the transportation of its household goods traffic. The Commission's failure to support its own regulatory requirements has left these carriers in a completely untenable position. Legislative relief is required to establish which agency rules are to be given priority by these carriers.

On behalf of the Association, I appreciate your consideration of our comments in your review of the Motor Carrier Act of 1980 and the Household Goods Transportation Act of 1980. I would be pleased to respond to any questions or comments you may have regarding this statement.

Senator DANFORTH. Thank you very much.

Would you explain to me who is hurt by volume discounts and how?

Mr. SIBILA. In my estimation, it is the small agent in particular and also the small carrier.

Senator DANFORTH. The small agent?

Mr. SIBILA. The small agent.

Senator DANFORTH. And the small carrier?

Mr. SIBILA. Right, because even though the larger agent or the carrier may give a volume discount, and be receiving all the booking commissions in Chicago, we are the ones that, in many cases, are performing the service from Massillon, Ohio, and we are the ones that have to pay the driver, we are the ones who provide the equipment. We have no say so-in any of those discount rates, but still we have to provide that service at a lesser rate and at a lesser income than would be normally prevalent.

The COD shipper is also being hurt, because he is the one paying the fare, and he is the one who has to make up the difference. He could be moving to exactly the same place, be provided exactly the same services, as one of the shippers with the large volume discounts. So, he is the one that is making up the difference in the tariff.

Senator DANFORTH. What should be done about volume discounts?

Mr. SIBILA. If history services me right, I think that is why the Motor Carrier Act was passed back in 1935. At a hearing some time ago, I said that, before we tear that fence down, we had better find out why it was put up in the beginning.

Senator DANFORTH. What are you suggesting?

Mr. SIBILA. I am suggesting that these practices be discontinued, and that the Interstate Commerce Commission become involved in it. They are going their own way, and I know they won't do it, but that is my suggestion.

Mr. MCBRAYER. I would tend to agree with that, Mr. Chairman; the small mover doesn't have the sophisticated advertising and other facilities that the larger carriers have. He simply doesn't have shippers who have the volume that would justify the offer of discounts. It is a discriminatory practice in my opinion. The smaller shipper loses and the smaller mover loses, and the agent loses. I think that is right.

Mr. SIBILA. It must be remembered, Mr. Chairman, hardly any, in fact, I don't know of any of the large van lines that own their own equipment. We are the ones providing the equipment and the drivers.

Senator DANFORTH. Then, each of you favors joint ratemaking?

Mr. SIBILA. The continuance of rate bureaus, in order for us to accumulate the information; yes, sir, I do, as long as independent action is maintained.

Mr. MCBRAYER. Absolutely.

Senator DANFORTH. Why shouldn't that apply to any industry; why just the moving industry?

Mr. SIBILA. In truckload, and I am also a carrier in truckload traffic of general freight, there I can maintain, and I have, the information necessary to maintain my own individual tariffs, and for comparative reasons I do it. But I don't have the sophistication or the wherewithal to maintain that type of information for the various services required in household goods services.

Senator DANFORTH. You can't judge, when somebody calls you to go to his house, when you look at the house, and when you look at the furniture, and he says, "I want you to move it from Fort Belvoir to Fort Leonard Wood," or someplace? You say, "That is fine, and here is what I will charge you." I don't see why you can't do that.

Mr. SIBILA. If you would give me a full truckload, maybe not even a full truckload, maybe a 10,000- to 15,000-pound shipment, certainly I would be able to accumulate that type of information. But the cost accumulation on the 500-pound shipment mixed with a 1,000-pound shipment mixed with a 15,000-pound shipment, no, I can't do that.

Mr. McBRAYER. Mr. Chairman, have you moved into the area of DOD traffic; is that what you are inquiring into now?

Senator DANFORTH. No; I am sorry, I shouldn't have said that. Let's say, if you want to move from Arlington to Rolla. Maybe it is a very specialized business, very esoteric, but it seems to me that in any business, any kind of a business, it is basically a question of getting more in than you are paying out. I just don't understand why there is anything so special about moving.

Mr. SIBILA. That is why I mentioned that the proponents of this really demonstrate a lack of working knowledge of the day-to-day operations.

Senator DANFORTH. I have a total lack. My basic role in moving, and I have done a lot of it, is to bring in the moving van, get the job done, and pay the bill—sometimes complain, not very often, though.

Mr. SIBILA. Let me make my point again. If I were to move one shipment from Massillon, Ohio, to Fort Lauderdale, Fla., hopefully, and it was pretty much of a full vanload, I could accumulate that type of data. It is on the less-than truckload, on the combination deal, because we are moving different size shipments to different places with different mileages, that I don't have the wherewithal to accumulate that type of information, the same way that I would not have the wherewithal to accumulate LTL if I was in the freight business. I am in the freight business, but it is truckload, thank God. The LTL business, there isn't any way that I could accumulate that type of information.

Senator DANFORTH. Senator Pressler, do you want to ask any questions.

Senator PRESSLER. No, thank you, Mr. Chairman, other than to thank the witnesses for being here with us today. I may have some written questions for the record. I apologize for being late, but I was engaged in another hearing.

Senator DANFORTH. What are your concerns about the ICC's leasing regulations?

Mr. SIBILA. I gave you one example. If I understand them right, there will be more control over the owner/operators, so much so that we may be in violation, and be threatening the status of an independent contractor, or those who use independent contractors. In my own particular company, I don't, but that is what the other people tell me are their concerns.

Senator DANFORTH. Could you just explain that to somebody who is not totally into the industry?

Mr. SIBILA. As I said, I don't use owner/operators or independent contractors, but it is prevalent in the industry. It is my understanding that under the new leasing rules and regulations, there will be a certain amount of control by these rules.

From what they tell me, these controls will be such that we would be very threatened as far as the independent contractors. In other words, they would be having so much control over that status of independence that they would be threatened.

Also, there is quite a bit of paperwork involved for a short-term lease. I think there is one other concern that they mentioned, and that is on the payment schedule. I think there is a 15-day requirement in there that is practically impossible to meet because of just

the mailing from the agency to the van line, and so forth, and back, to pay the drivers.

Senator DANFORTH. Gentlemen, thank you very much.

Next we have Robert Miller.

## STATEMENT OF ROBERT R. C. MILLER, VICE CHAIRMAN, HOUSEHOLD GOODS CARRIERS BUREAU, ACCOMPANIED BY JOSEPH M. HARRISON, PRESIDENT, AND THOMAS AUCHINCLOSS, GENERAL COUNSEL

Mr. MILLER. Thank you, Mr. Chairman.

My name is Robert R. C. Miller, and I am vice chairman of the board of Atlas Van Lines, Inc., with headquarters at Evansville, Ind.

This statement is submitted on behalf of the Household Goods Carriers Bureau, Inc., and its approximately 1,700 member carriers. On my left is Mr. Joe Harrison, who is president of the Household Goods Carriers Bureau, and on my right is Mr. Tom Auchincloss, who is general counsel for the bureau, and who assisted in the preparation of this material.

This bureau is the principal ratemaking organization of the household goods carrier industry. It operates pursuant to a collective ratemaking agreement that has been filed with the Interstate Commerce Commission. As a representative of the industry's principal rate bureau, my testimony will address matters bearing upon carrier ratemaking as it is involved under the 1980 legislation.

It has been nearly 18 months since the bureau last reported to you. You were told that the Commission's role throughout the reregulation phase of adjustment to the standards mandated by the 1980 legislation was one of indifference. Unfortunately, the situation has not improved and, in fact, it has worsened.

My industry clearly recognizes that one of the principal objectives of the 1980 legislation was to stimulate price and service competition, and in fact the industry has made significant strides in this area.

In our view, however, Congress did not direct the ICC to do nothing to monitor the pricing practices of carriers, particularly as they relate to and affect consumer-shippers. I am not aware of one action that the ICC has taken to enforce the numerous ratemaking standards contained in the Interstate Commerce Act.

Of course, we are aware of the recent institution of a Commission proceeding which might appear to address these issues. Speaking frankly, however, the Commission had the opportunity to institute such a proceeding more than a year ago at the urging of the committee for lawful rates, and it declines to do so.

Put quite succinctly, the ICC has done nothing and appears unwilling to do anything that would provide a measure of guidance or set a direction for reasonable carrier ratemaking. We have every reason to believe that the Commission intends to do nothing.

It seems content to let the marketplace dictate the prices carriers will make available to the public. We would not object to this were it not for the fact that my industry was led by Congress to believe that the household goods carriers were unique because of

their close contact with consumer/shippers, requiring closer scrutiny than other segments of the trucking industry.

You have heard testimony from other representatives of my industry to the effect that the heavy hand of ICC regulation continues to permeate the day-to-day operations we conduct. Recent ICC promulgation of new leasing regulations is a good example of this situation.

So we have, on the one hand, an ICC that continues to be quite active in the area of carrier/owner-operator leasing practices, as well as the paperwork requirements that it is willing to impose on carriers while, on the other hand, we have apparent total indifference toward carrier pricing practices. This situation exists notwithstanding the congressionally mandated directives that carrier rates be no more than just and reasonable, nondiscriminatory, nonpreferential, and nonpredatory.

Viewed from my industry's standpoint, the question that must be answered is: What useful purpose does the ICC serve?

If the present Commission is going to do nothing to enforce the law as Congress has written it, but intends to stretch the law in a manner that perpetuates paperwork regulations, and promotes further intrusions into the labor-management area, it has obviously outlived its usefulness.

I will now provide examples of ICC inaction which support the allegations I advance.

Almost 1 year ago, the bureau filed a petition with the Commission posing a question of major concern to carriers who price their services for large corporate shippers and consumer shippers. The question posed is:

> Does the motor carrier of household goods engage in rate or service preference or other discriminatory practices barred by the act when it enters into a contractual relationship with a national account shipper for the transportation of personal effects at rates below that charged consumer-shippers for the same transporatation?

I have additional comments. I assume that they will be contained in the material that we have left, Mr. Chairman.

Senator DANFORTH. All statements will be in the record and will be carefully examined.

Mr. MILLER. Thank you.

Senator DANFORTH. Do you think that the ICC has outlived its usefulness, and it should just be scrapped?

Mr. MILLER. I feel that the ICC has a proper role to play, a more important role in the ratemaking process. I think, should they affect that type of posture, they have a very important part to play in the regulation of surface transportation. Certainly, it is not just household goods, it is motor carrier transportation also.

Senator DANFORTH. In your industry, household goods, would you be just as well-off without the ICC regulating you?

Mr. MILLER. Mr. Chairman, as I think I have just indicated in the material that I have presented, if they do not feel that the ratemaking process that Congress has empowered them with is that important, and that they should supervise that as they are mandated to do, then, yes, I would have to say that they should be.

I happen to feel that they can perform that function properly, and in doing so properly, they are certainly needed, I think, by not only our industry, but motor carriers in general.

Senator DANFORTH. What do you think is wrong with the ICC now?

Mr. MILLER. Mr. Chairman, the Chairman of the Commission is sitting right behind me.

No, he is gone.

The Chairman of the Commission has expressed an openness in his dealings with the industry that is very refreshing, and we are very anxious to see what happens in the areas that we have addressed. There are several others that I did not get to refer to, because I thought we had 8 minutes instead of 4.

I would just say, the Commission has at least obtained a greater insight into our industry in the last year than they perhaps had before in the previous year. I attribute much of that to the Chairman of the Commission, and his interest in establishing better dialog. I would prefer not to go any more deeply into that question at this time, unless either of my associates would like to comment.

Senator DANFORTH. You said you thought you had 8 minutes, and you had only 4. Without just reading the statement, are there other points that you feel are important to make?

Mr. MILLER. Yes. We had one point that we did want to make with regard to binding estimates. We have talked about contract ratemaking practices in our industry that we feel probably have a great deal to do with it. If this issue is properly addressed by the Commission, as we have asked in our petition and in several subsequent filings with the Commission on that particular question.

If we can do that, we feel that perhaps the occasional COD mover, who is individually lacking bargaining power, will perhaps be dealt with more properly, because we think that the contract ratemaking guidelines that we have asked for from the Commission may clarify the situation that we have been involved in.

I did mention binding estimates. We have asked that the Commission set forth the standards on which these binding estimates be made. We believe that Congress intended that a mechanism would be available that would assure the public that binding estimates could be determined to be nonpreferential, nondiscriminatory, and nonpredatory. We are basically asking that the Commission set forth guidelines in this area, so that they can be assured that these congressional aims are carried out.

The third area is the military situation, which has been alluded to by other members of the industry here this morning. The Department of Defense is buying its services from the industry as the rest of our customers are, whether national accounts or individual COD, and we feel that they have the obligation to go under the same regulations.

I think those are the essential points that we wanted to make.

Senator DANFORTH. Yes, I frankly think that is a reasonable point. It seems a little bit outrageous, if you are performing an identical service. It is identical, isn't it? They claim that the Department of Defense is different.

Mr. MILLER. The individual move is handled identically, in my opinion.

Senator DANFORTH. Senator Pressler.

Senator PRESSLER. I would like to followup on that line.

In your experience, has there been a change in Government attitude regarding paperwork and the people who regulate you? You have covered that somewhat, but are there specific complaints? Do you think that the attitude has improved?

There are always complaints, I suppose, but is it something that we should be doing something about here?

Mr. MILLER. I think in the one area that was addressed earlier, Senator, before you came in, the leasing and interchange rules and regulations that the Commission has issued, we think that they probably have added to the burden of paperwork, rather what they are going to achieve by it.

In other areas, we have not reduced the paperwork to the extent that was intended when Congress adopted the act, in our opinion. Another member of the industry commented on that today, he even alluded to the so-called zero-base type of rules and regulation which was one of the suggestions of the industry as a starting point. This was not done.

I am encouraged, however, by several statements that were made by the Chairman and his associates this morning that they are looking at additional ways to curb paperwork, and one good way would be to make some changes in the lease and interchange rules that they adopted.

Senator PRESSLER. One other area of great interest to me is how the act is affecting rural and small town areas, and by that I don't mean suburban areas. I know in the Communications Subcommittee, whenever I talk about service in the rural areas, they all say, yes, the cable industry is serving rural areas, and they give me examples of suburban areas.

I am talking about out there where you really have small towns dimpled around an area of towns of 4,600 people, very low density population. Is there anything we should know about any problems in that particular area?

Mr. MILLER. I think one area that perhaps should be kept in mind by this committee is that the household goods business is basically offering to provide moving services from any place to any place, and it does impact the smaller areas.

We do have some difficulty in maintaining an agency system in some of the smaller areas that is essential for providing that service. We addressed earlier this contract carriage question that needs resolution, which has created the discounting that has some effect, and it may have affected the cost of moves for individual customers in those areas. Agents and the rate levels perhaps could have been affected somewhat negatively by this action.

Senator PRESSLER. Thank you, Mr. Chairman.

Senator DANFORTH. Mr. Miller, just one other very general question. How would you describe the health of this industry?

Mr. MILLER. The health overall, I would say, is reasonably good. There are some large carriers, and there are small carriers, small agents that are not faring as well under this new competitive situation. Overall, I think we are able to compete in the area. We have not been affected as an industry quite as drastically as other parts of the industry in our own State of Indiana, for example, that you are well-aware of.

Mr. Auchincloss might like to add a comment.

Senator DANFORTH. Sure.

Mr. AUCHINCLOSS. Let me make one observation for you, Mr. Chairman.

It is a fact in this industry that we have no private carriage. We see in the general freight common carrier industry a diversion of traffic toward private carriage. In the moving segment of this industry, however, if you have to move, you have to turn to a mover to perform that service for you. So the public continues to rely on these people to do what they must do. Given that situation, we will continue ad infinitum, I would contend, to rely on these same people to do the same work over the years.

IBM, for one, will never hire its own trucks to move its employees' personal possessions. IBM, however, will hire its trucks to transport its computers. So there is a distinct difference in this industry, and the public's dependence on this industry is really the hallmark of all of this legislation that we see and the apparent ICC indifference toward the ratemaking area.

They are willing to impose upon the industry leasing requirements and intrusions in the labor-management area, but they will not do anything to maintain a measure of stability in the industry, and that stability has to come through reasonable ratemaking.

Senator DANFORTH. How would you grade the 1980 act, if you were to give it a grade from A to F?

Mr. AUCHINCLOSS. As a lawyer?

Senator DANFORTH. No, as a matter of policy and how it has affected the industry.

Mr. AUCHINCLOSS. A lot of confusion in some instances.

Senator DANFORTH. What grade would you give it?

Mr. AUCHINCLOSS. Possibly a C, maybe a low C. I do this because I am concerned, and I know the industry is greatly concerned, with the burden that is shifting to the consumer. It is a fact that the contract carrier ratemaking situation that is going on in this industry right now is for the benefit of large shippers. I, as a consumer/shipper who will some day move to Florida, perhaps, will never have the benefit of an IBM discount, for example. So I will subsidize the movement of IBM traffic.

Senator DANFORTH. You are talking about discounts now.

Mr. AUCHINCLOSS. I am talking about contract rates and that whole area in which the consumer derives no benefit from the discount.

Senator DANFORTH. I don't know what contract rates are. Are they like discounts?

Mr. AUCHINCLOSS. Yes.

Senator DANFORTH. Special rates for big volume?

Mr. AUCHINCLOSS. Exactly. IBM for one, I hate to continue to pick on them, but they bring in a van line, or several van lines, and say, "We will have 10,000 moves next year."

Senator DANFORTH. That hurts the small carrier?

Mr. AUCHINCLOSS. It shifts the burden to the small carrier.

Senator DANFORTH. It hurts the small shipper also.

Mr. AUCHINCLOSS. Exactly.

Senator DANFORTH. Is that your view, Mr. Miller?

Mr. MILLER. Yes; it essentially is my view.

Senator DANFORTH. What grade do you give the act?

Mr. MILLER. Having never had to grade an act before, I would have to give it something between a B and C, because I think the intent was in the proper direction. I think there are some things in the oversight area that we are addressing here that need correction that will make it a stronger act.

Senator DANFORTH. De you think Congress should address the question again? Should we be legislating, or is this really a matter that the ICC could clear up?

Mr. MILLER. I will seek the advice of counsel here, and let him answer that.

Mr. AUCHINCLOSS. What I think Congress should do, and I am sure the bureau thinks Congress should do, is to direct the ICC, to implore it to enforce the act. All of the standards, and the mechanism are there, we simply have no ICC enforcement, it is that simple.

Senator DANFORTH. The ICC is not enforcing the act, meaning in short what?

Mr. AUCHINCLOSS. In short, it is not making any determination as to whether rates are not more than just and reasonable, or nonpreferential, or nondiscriminatory. As we said today, and the statement that has been submitted outlines this in detail, we asked the Commission more than a year ago to look into the contract carrier ratemaking situation, and whether or not it doesn't in fact shift the burden upon the consumer. Nearly a year has passed, and we have filed two supplemental petitions, and the ICC has done nothing. It sits there, not a single word.

Senator DANFORTH. Do you think that they are lazy?

Mr. AUCHINCLOSS. I think they are indifferent.

Senator DANFORTH. You think it is a matter of ideology?

Mr. AUCHINCLOSS. I think that it is a matter, within the Commission itself, or perhaps directives from the administration or wherever, that we are in a full-fledged deregulation phase, notwithstanding what the act may say in the ratemaking area, at least.

Senator DANFORTH. That is your view, too, Mr. Miller?

Mr. MILLER. Yes.

Senator DANFORTH. Their view is that, basically, it is a matter of ideology that anything goes?

Mr. MILLER. I think that that has been expressed in several speeches over a period of time.

Mr. AUCHINCLOSS. In the ratemaking area, Mr. Chairman, since enactment of this legislation, we don't know of a single ICC proceeding in which the issue has been, is the rate reasonable; is it unreasonable; is the rate discriminatory; is it preferential or nonpreferential. There just have not been any. The ICC is doing nothing in this area, but it will continue to impose paperwork requirements and new leasing regulations on the industry.

Senator DANFORTH. They claim that they are reducing paperwork, but your view would be that almost any paperwork is too much if they are not doing anything?

Mr. AUCHINCLOSS. If they are not providing a measure of stability to the industry to recoup the revenues necessary, or generate the revenues necessary to support that paperwork process, then the question posed in the statement, "What usefulness is it serving?"

The position of the industry is that it is not serving a useful purpose.

[The statement follows:]

STATEMENT OF ROBERT R. C. MILLER, VICE CHAIRMAN, HOUSEHOLD GOODS CARRIERS' BUREAU, INC.

My name is Robert R. C. Miller. I am Vice Chairman of the Board of Atlas Van Lines, Inc. and its domestic subsidiaries with headquarters at Evansville, Indiana. This statement is submitted on behalf of the Household Goods Carriers' Bureau, Inc. (Bureau) and its approximately 1,700 member carriers in response to the Subcommittee's invitation to testify on the Interstate Commerce Commission's (ICC) implementation of the Household Goods Transportation Act of 1980 and the Motor Carrier Act of 1980.

The Bureau is the principal ratemaking organization of the household goods carrier industry. It operates pursuant to a collective ratemaking agreement that has been filed with the ICC under 49 U.S.C. § 10706. The Bureau's rates and charges apply throughout the United States and between points in the United States on the one hand, and, points in Canada and Mexico, on the other.

I have been active in the transportation industry for 30 years, with the last 18 being devoted to the household goods moving industry. I am the Vice Chairman, a Director and a Member of the Rates and Tariffs Committee of the Bureau. I also serve as a member oi the Executive Committee of American Movers Conference and Alternate Vice President of American Trucking Associations, Inc.

As the representative of the industry's principal rate bureau my testimony today will address matters bearing upon carrier ratemaking as it has evolved under the 1980 legislation.

It has been nearly 18 months since the Bureau last reported to you. At that time you were told that the Commission's role throughout the reregulation phase of adjustment to the standards mandated by the 1980 legislation was one of indifference. Unfortunately, this situation has not improved and, in fact, it has worsened.

My industry clearly recognizes that one of the principal objectives of the 1980 legislation was to stimulate price and service competition. And, in fact, the industry has made significant strides in this area. In our view, however, Congress did not direct the ICC to do nothing to monitor the pricing practices of carriers particularly as they relate to and affect consumer shippers. I am not aware of one action the ICC has taken in the ratemaking area to enforce the numerous ratemaking standards contained in the Interstate Commerce Act. Of course, we are aware of the institution of a Commission proceeding [1] which might appear to address these issues. Speaking frankly, however, the Commission had the opportunity to institute such a proceeding more than a year ago at the urging of the Committee for Lawful Rates and it declined to do so. Put quite succinctly, the ICC has done nothing and appears unwilling to do anything that would provide a measure of guidance or set a direction for reasonable carrier ratemaking. And, we have every reason to believe that the Commission intends to do nothing. It seems content to allow the marketplace to dictate the prices household goods carriers will make available to the public. We would not object to this were it not for the fact that my industry was led by Congress to believe that household goods carriers were unique because of their close contact with consumer shippers requiring closer scrutiny than other segments of the trucking industry. You will hear testimony from other representatives of my industry to the effect that the "heavy hand" of ICC regulation continues to permeate the day-to-day operations we conduct. Recent ICC promulgation of new leasing regulations is a good example of this situation.

So we have on the one hand, an ICC that continues to be quite active in the area of carrier/owner-operator leasing practices as well as the paperwork requirements it is willing to impose of household goods carriers while, on the other hand, we have total indifference towards carrier pricing practices. This situation exists notwithstanding the Congressionally mandated directives that carrier rates be no more than just and reasonable, nondiscriminatory, nonpreferential and nonpredatory. Viewed from my industry's standpoint the question that must be answered is: What useful purpose does the ICC serve? if the present Commission is unwilling to do anything to enforce the law as Congress has written it, but intends to stretch and distort the law in a manner that perpetuates paperwork regulations and promotes fur-

[1] Ex Parte No. MC-166, Pricing Practices of Motor Common Carriers of Property Since the Motor Carrier Act of 1980.

ther intrusions into the labor/management area, it has obviously outlived its usefulness.

I will now provide examples of ICC inaction which support the allegations I advance in this statement.

Almost one year ago, on January 6, 1982, the Household Goods Carriers' Bureau filed a petition for declaratory order with the Commission posing a question of major concern to household goods carriers who price their services for large corporate shippers and consumer shippers. The question posed is:

"Does a motor common carrier of household goods engage in rate or service preference or other discriminatory practices barred by Section 10704 of the Act when it enters into a contractual relationship with a national account shipper for the transportation of personal effects traffic at rates below those charged consumer shippers for the same transportation?"

To date the ICC has done nothing more than assign this declaratory order a docket number,[2] notwithstanding the fact that nearly a year has passed and we have filed two supplemental petitions, one on June 18 and the other on August 6, urging Commission action.

Our reading of the legislative history underlying the Household Goods Transportation Act of 1980 fully documents Congress' concern for the well being of consumer shippers. The report of this Committee which accompanied that legislation contains the following expressions of Congressional concern:

"The fact that the household goods sector does business directly with individual shippers also sets it apart from the rest of the trucking industry. These shippers usually move only once or twice in their lives and, consequently, lack a thorough understanding of the industry and sufficient clout to negotiate with it. Their situation is made more vulnerable by the fact that the moves involve all of their personal possessions, which often are of a fragile nature." H. Rep. No. 96-1372, 96th Cong., 2nd Sess. 2, reprinted in [1980] U.S. Code Cong. & Ad. News 4271, 4272.

"In putting together this legislation, the Committee focused its attention on the individual shipper's special situation. * * *" Ibid., at 3; 4273.

"The reported bill makes changes in three general categories. It reduces unnecessary Government regulation; it establishes new remedies and protections for consumers; and it furnishes additional pricing options for the carriers and the consumers." Ibid., at 4; 4274.

"* * * the Committee recognizes that many users of household goods carriers are ordinary consumers unfamiliar with how the industry works and without the economic leverage of commercial shippers. These persons tend to be more vulnerable than other shippers and, hence, in need of protections that are not necessary for other motor carrier shippers. Accordingly, this bill provides the Interstate Commerce Commission with special authority to protect these shippers." Ibid., at 5-6; 4275.

Based on this, it seemed apparent to my industry that we must conduct our business in way that avoids pricing policies or practices that work to the disadvantage of consumers. Yet we have in effect today carrier pricing practices that work to the distinct disadvantage of consumer shippers. Household goods carriers, my company included, are engaged in wholesale rate cutting for the benefit of national account shippers. It principally takes the form of negotiated contract rates. Prevailing economics dictate that the industry follow this course today but we do not believe we would be on the course in the first place if the ICC simply enforced the law. In the petitions filed with the Commission we argued that the present contract ratemaking practices my industry is engaged in will inevitably lead to the question:

"Is the occasional c.o.d. mover, individually lacking bargaining power, being subjected to charges that are higher than the cost of providing the service they require because carrier revenue from contract carrier national account movements are inadequate?" Precisely the same question was posed by the ICC some four years ago in a rate proceeding[3] in which the Commission expressed concern about the occasional c.o.d. individual mover who was being asked to subsidize the movement of household goods shipments transported for the Department of Defense. In that proceeding the Commission concluded that military household goods traffic was receiving a "free ride * * * at the expense of the so-called c.o.d. shipper."[4] Apparently, the present

[2] Docket No. 38769, Household Goods Carriers' Bureau, Inc.—Petition for Declaratory Order—Lawfulness of Contract Carriage Rates.

[3] I. & S. Docket No. M-29844, Increased Rates Household Goods Carriers' Bureau, July 1978.

[4] Id. at 13-14.

ICC is either not perceptive enough to see that this situation exists or if it perceives the problem, it is quite content to let it continue unabated.

A second point illlustrating the Commission's apparent indifference to the legislative commands of 1980 was brought to this Committee's attention at the oversight hearing held in June 1981. It involves binding estimates of carrier charges. The Commission's failure to establish any requirements that binding estimates must be made available to the public on a nonpreferential basis and that they not result in predatory charges continues. The ICC has done nothing to establish standards which insure carrier compliance with these Congressional mandates.

The new legislation (49 U.S.C. § 10734) requires that any carrier who offers binding estimates must conform to the tariff requirements of Section 10762 of the Act. The Commission has done nothing to enforce this requirement. The Act also mandates that binding estimates "* * * must be available on a nonpreferential basis to shippers and must not result in charges to shippers which are predatory." We believe Congress intended that a mechanism would be available through which members of the public, shippers and carriers alike, could reach a determination as to whether binding estimates are or are not preferential or predatory. In our view this is precisely why Congress required observance of normal, traditional tariff filing requirements. It is only through publication and public inspection that binding estimates can be determined to be nonpreferential and nonpredatory. On the question of whether such rates are in fact preferential or predatory, the Commission has said that it will make such determinations on a case by case basis. This approach has no meaning at all. Neither shippers nor carriers could develop a record from which a formal Commission proceeding could be instituted and, in fact, the Commission has not instituted a single proceeding to reach such a determination.

The final point I will discuss involves my industry's strong commitment to collective ratemaking and an apparent growing trend within the Department of Defense and its Military Traffic Management Command to undermine that process as it is now conducted under Congressionally set standards.

Disregarding the Department of Defense policy for a moment, this Committee should understand the importance of collective ratemaking in the present scheme of regulation of my industry. Of the approximately 2,000 household goods carriers who operate in our Nation all are engaged in collective ratemaking. Long experience has shown us that in the household goods segment of the trucking industry collective ratemaking is the only means by which reasonable rate structures can be formulated and held out to the public for the joint carrier services it requires. Movers, of course, recognize that the present regulatory system while certainly not perfect, is a far step from unbridled cutthroat competition with the consumer shipper standing as the pawn between competing carriers. In the area of carrier pricing, collective ratemaking is the mechanism that has resulted in the maintenance of just and reasonable rate structures. This, coupled with the ratemaking standards contained in the Interstate Commerce Act, provides the framework for the creation and maintenance of pricing structures that do not exact unreasonable carrier profits from the public.

Turning to the Department of Defense, it has apparently embarked upon a program that is intended to undercut collective ratemaking to the end of gaining preferential rate treatment for military shipments. This program has resulted in refusals to accept lawfully formulated collective rates and directives to carriers that if they intend to do business with the military they will do so at rates considerably below those held out to the public generally. During the 1982 moving season the collective rate level established by directive of the Department of Defense was roughly 25 percent below the rates available to consumer shippers for the same service. This has created a situation that is the same as that addressed by the ICC in the Commission proceedings [5] I referred to earlier in this statement. Consumers are being forced to subsidize the transportation of military household goods shipments. Congress should be aware of the obvious burden consumers are being asked to assume for an agency of the United States Government. My industry intends to vigorously resist these attempts by the Department of Defense to set the levels of rates at which household goods carriers will transport shipments for the military. It is, however, unfortunate that we must expend so much energy to simply exercise the prerogative we have enjoyed for so many years—the right to offer one's services to the Government at rates we believe will return a profit.

I thank the Subcommittee for this opportunity to appear before you today.

Senator DANFORTH. Gentlemen, thank you very much.

[5] I. & S. M-29844.

Next we have a panel of Donald Terry, David Bennett, and Morrison Stevens.

Senator PRESSLER. Mr. Chairman, I have to go back to another committee meeting, but I may have some additional questions for the record.

Senator DANFORTH. Of course, and we will keep the record open. Mr. Terry, your name is first on the list, would you like to start?

## STATEMENT OF DONALD TERRY, PRESIDENT, ROTHERY STORAGE & VAN CO.; AND MORRISON STEVENS, STEVENS VAN LINES, INC., ACCOMPANIED BY ROBERT J. GALLAGHER, COUNSEL, AND MR. PIERCE, ATTORNEY

Mr. GALLAGHER. Mr. Chairman, my name is Robert J. Gallagher, and I am the attorney for the parties here, if I could just introduce them.

Senator DANFORTH. Of course.

Mr. GALLAGHER. To my right is Donald Terry, who is president of Rothery Storage & Van Co. Rothery is an Atlas agent, and Mr. Terry is appearing to bring to the committee's attention a policy that Atlas Van Lines is seeking to effect. It is the position of Atlas Van Lines carrier agents that if this is effected it will severely restrict the competition in the moving industry.

On Mr. Terry's right is Morrison Stevens, president of Stevens Van Lines of Saginaw, Mich. Stevens is United agent. Mr. Stevens will contend that if the Atlas proposal is not rejected by the Interstate Commerce Commission, it or similar proposals will spread to other major van lines.

On Mr. Stevens' right is my associate, Mr. Pierce, who has been active in representing the Atlas carrier agents before the Interstate Commerce Commission.

I wish to note that David Bennett, president of Dobson Cartage & Storage, who had been scheduled to be present, has been unable to attend. Dobson was an Atlas agent, and is presently a Mayflower agent.

Mr. Terry.

Mr. TERRY. Good morning. I am Donald Terry, president of Rothery Storage & Van Co., Elk Grove Village, Ill.

Rothery is a 70-year old moving company that has had ICC authority to operate as a household goods carrier. Rothery is also one of the original founders, stockholders, and agents of Atlas Van Lines. I very much appreciate the opportunity to bring to the committee's attention the problems that are faced by companies in our position.

The most important change in the structure of the household goods industry since 1980 is a determined effort by several major van lines to stifle the ability of smaller and regional carriers like Rothery to use our independent operating authorities.

The local household goods moving firms own most of the facilities used in the moving industry and created the van lines to facilitate efficient interchange of vans and tonnage. With the van line organization being given control of the net working arrangements, they have risen from servants to masters.

The six major van lines now control about 80 percent of the available traffic generated by small businessmen like me. Now some of the major van lines have announced policies by which they would prevent any firm affiliated as an agent from substantial dealings with any firm not affiliated solely as an agent.

The leader in this approach, Atlas Van Lines, would exact from each of us, as a price of not being locked out of the large agency networks, that we reorganize our entire operations, splitting them into two corporations, and operate under restrictions, leading to inefficiencies, considerable cost, and economic hurt.

At Rothery, we estimate that to comply with the Atlas program would cost us $700,000 the first year, and about $350,000 a year thereafter. It would make effective use of our own interstate authority very difficult.

In 1981, the Commission brought an immediate suit against Atlas to stop a very similar program, but when 28 carrier agents complained about Atlas' 1982 version of the same game, the Commission took 3 months to issue an order which said that it would start a proceeding to decide whether it had jurisdiction over this kind of a program. Whereby certain van lines decided to reorganize their corporations to limit competition.

We believe that you made clear in 1980 that the Commission had jurisdiction over combinations of carriers affecting competition, however the combination might be disguised. But the Commission has allowed Atlas to implement its carrier agent program without hindrance even as it is meditating over what it should do about that program.

We have protested the major van lines' program to the Commission, and some of us are organizing a pooling agreement as a defensive measure to be submitted to the Commission today. This would allow, at least, access to a part of the market which major van lines seem intent on closing off. We hope that the Commission will come to a sensible result in the pending proceeding, but we have seen very little to encourage us so far.

We want to make as clear as we can to your committee that unless someone steps in to restrain combinations among carriers instigated by major van lines to squeeze out the smaller carrier, the Congress attempt to create a more open and competitive household goods industry will be substantially thwarted, and firms like ours face a very difficult time in the years ahead.

Thank you.

[The statement follows:]

STATEMENT OF DONALD TERRY, PRESIDENT, ROTHERY STORAGE & VAN CO.

I am Donald Terry, President of Rothery Storage and Van Co., Elk Grove Village, Illinois. Rothery is a 70-year-old company that has an Interstate Commerce Commission certificate to operate interstate as a household goods carrier. Rothery is also one of the original founders of Atlas Van Lines, Inc. and has been an agent for it since its inception.

I very much appreciate the opportunity to state publicly the problems faced by our company and others like it.

I have to put it to you straight. Even though in passing the Motor Carrier Act and the Household Goods Act you intended, we believe, to make it easier for firms like mine to get and use interstate operating authority, and to have the Interstate Commerce Commission prevent combinations among carriers which would stifle competi-

tion, at least one of the major household goods van lines is making a mockery of your law, and the Interstate Commerce Commission is doing nothing about it.

Please allow me in this statement to establish a few factual matters you may not be aware of. The vast bulk of the assets in the household goods moving business are not owned by the "van lines" with the national names, like Atlas, North American, and Mayflower. They are owned, for the most part, by locally based moving and storage firms, like mine, and to some extent by truck owner operators. We, the local moving companies, do the advertising, and pay for it ourselves. We do the sales calls. We do the pickups and deliveries. We even provide most of the line haul transport.

If this is so, and it is, how do the "van lines" have their importance, and prominence? I'll tell you how. In the late 1940's, the Rothery firm, and others like it, most of whom had their own interstate operating authority at the time, got together to establish one of these van lines—Atlas. We actually created the Atlas company, to be a means of returning vehicles to each of us, of knitting together widely scattered operations so as to get efficiency in moving trucks between them, under a common name and with uniform operating practices. The other major van lines were created in a very similar fashion. The van line was to be a sort of broker, serving each and all members, who acted as "agents" for it. This put under one control point the traffic moving between many different firms, who need to be able to connect with each other.

But now the servant has become the master. The van line organizations have taken on a life of their own. In the period in which broad scale interstate certificates were hard to get and the ICC limited a local company's ability to work with more than one major interstate carrier, six large van lines came to control about 80 percent of the desirable interstate household goods transport. Now most of the sizable local household goods companies are highly dependent upon affiliation with a van line. That affiliation is their connection to most of the remaining moving world. Most of them are very fearful of doing anything that would cause a major van line to "cancel" their agency relationships.

In the late 1970's we could see that as the Motor Carrier Act and the Household Goods Act came closer to reality, Atlas and some of the other major van lines became increasingly fearful that firms like ours would expand our authorities and/or use our own authorities more effectively. Atlas began to take a whole series of actions obviously designed to make us give up our authorities or make us unable to use them. They tried to tax us on movements made on our own authorities, not involving them in any way. They then tried to enlist all their agents in a program of refusing to deal with firm using its own authority. In 1981 the Interstate Commerce Commission filed suit against Atlas to restrain this sort of conduct, pointing out to a Federal District Court that Atlas was controlling the operations of other carriers in a program designed to stifle competition. Atlas backed down. For as long as the Commission took this approach, we felt there was some protection for competition in the market.

But then in 1982, things somehow changed. Immediately after Atlas got Commission approval of a "pooling agreement" which guaranteed that any firm acting as an agent for Atlas would have an unimpeded right to use its own authority, Atlas announced a "policy" according to which all firms would be given a choice: either dedicate their own names exclusively to Atlas' use, and put their own interstate operating authorities in another corporation having no established market identity, or cease doing business with Atlas. Atlas clearly expected that dozens of carriers around the country would reorganize their operations in accord with its directive, or "policy", and that each of the firms which cooperated with it would cease to do any substantial business under its own name with any other firm in the country which did not have an agency relationship with Atlas. This would achieve a sort of group boycott. Notwithstanding, this major van line did not submit the new arrangement to the Interstate Commerce Commission for approval under that section of the Household Goods Act which requires that all combinations among carriers which might affect competition be submitted to and approved by the Commission before being put into effect.

A group of 28 carrier agents petitioned the Commission to stop what we saw as clearly a sham, an attempt to say that the Commission had approved one set of actions involving carrier agents but did not have jurisdiction over another set of actions by the same parties having directly the opposite effect. We participated in this proceeding because Rothery stands to immediately incur $700,000 in expenses, and anticipates approximately $350,000 for each subsequent year of operation. To our surprise the Enforcement Section of the Commission would do nothing, and when we filed a formal petition with the Commission they sat on it. First the Commission

took three months, from May till August, to come up with an order which said they did not know whether they had jurisdiction over a combination among carrier interests of the sort involved here, and would start a proceeding to consider that question. In their August 1982 order they did tell Atlas, and other van lines, that a van line could not say it was maintaining a pooling agreement with a group of carriers, and then pool with some of the carriers and not with others, without ICC approval. Notwithstanding this Commission directive, Atlas promptly continued with its program, persuading some of the other carrier agents to change their names and set up new corporations, so that Atlas was, in name, continuing to pool with some firms while dropping pooling with others. To induce firms to go along with its program, Atlas allowed the cooperating firms an especially advantageous distribution of revenues. Atlas has been making this new revenue distribution for some months now. In September we petitioned the Commission to take notice that Atlas was ignoring the Commission's August order and proceeding with its policy. The Commission has sat upon and ignored our petition for three months now. Not even a postcard in the mail in response.

Frankly, we are shocked. I keep telling our lawyers I want to go to court. They keep telling me that the whole controversy is so snarled up with the Commission that a court might very well not know where its own jurisdiction began and ended. I feel like a four million ounce fighter in the ring with a hundred and forty million ounce fighter, who is standing on my foot, gouging me in the eye with one thumb, and holding me with the other hand. I'm yelling to the referee to break this clinch and enforce the rules that say no gouging. The referee is thumbing through his rule book mumbling about not knowing whether the foot pin and the eye gouging are within his jurisdiction or maybe we should call a cop. I can't move, I can't swing, and my eye is getting damn sore. I think the referee is confused but he's giving a good imitation of being best friends to the bigger guy's manager. Maybe that referee could hurt me worse if he tried, but only if he put on gloves and ganged up with the bigger guy. Then at least I'd know I had to get out of the ring. If you count a month as a round this has been going on for six rounds now.

Congress is the last word on what it meant to accomplish in the 1980 legislation. Did you want to make it easier for us to get and use interstate operating authority? In passing Section 11342, dealing with pooling arrangements among carriers, did you intend for the Commission to look at and prevent combinations among companies which owned operating authorities of a short which tended to lessen competition, even if those companies dressed up the arrangement to make it appear they were not contracting with each other? If that is what you intended, let me tell you that this Commission seems to have gotten very confused about how to follow your directions. This Commission pretends that they must scratch their heads a lot to figure out that when a major van line makes arrangements with a large number of other carriers to have those other carriers set up new corporations, and adopt new names, and limit the way they do business with anyone not affiliated with the major van line, while also restricting the local companies' operations in ways I haven't even mentioned here, this is a combination of action among carrier interests which affects competition. There are hundreds of household goods moving companies in this country who know that Atlas and the other major van lines who have proposed similar programs are running a sham by the Interstate Commerce Commission. In Peoria, people know a sham like this when they seem it. But most of them are afraid to speak up, for fear of losing their van line affiliation. Some of the other major van lines have announced programs like Atlas', and in conversations with their personnel we hear very clearly that they are all watching to see which way the Commission will go on this issue. If Atlas can pursuade the Commission to look the other way, it appears most or all of the other market leaders will follow suit.

In my opinion, based on what we've seen so far, this Commission appears not to understand that it is supposed to block group boycotts involving groups of carriers, organized by one or more firms with a dominant position in the market, designed to limit competition. If that is the way the pending ICC proceeding turns out, you can write off a good part of your good intentions in passing the Household Goods Act of 1980. And you can write off the Interstate Commerce Commission as having any inclination or capacity to prevent restrictive and anticompetitive acts in this area. The fatter cats will play, and the mice will scramble about as best they can, very often winding up under a cat's paw.

**Mr. STEVENS. My name is Morrison Stevens, president of Stevens Van Lines of Saginaw, Mich., a United Van Lines agent.**

The problem of major carriers restricting their carrier agents from the use of their own authorities is not limited to Atlas. Two other major carriers have indicated that they will adopt similar restrictive carrier agent programs if the ICC allows the Atlas program.

Another major carrier, United Van Lines, is limiting their agents by another method, using mileage and geographical limitations. Most shippers require a carrier to offer 48-State service. The effect of the United restrictions is to deny us the ability to sell 48-State service on our own authority. If we can't sell 48-State service, we are precluded from offering the shipper competitive prices.

The effect of the United program is to weaken regional carrier agents such as us until the only major competitive factors are the major carriers. We can't believe that this is in accord with the intent of the 1980 legislation.

I speak more fully on this in my prepared statement, which I have also submitted to the ICC in a proceeding pending there. I would like to offer you an appendix detailing United's restrictive policies.

You have heard from major shippers today, regulators, associations, and some major carriers. Mr. Terry and I are the only small businessmen here today, other than the Mayflower Association representative. We believe that the Motor Carrier Act of 1980 was for all carriers in the industry, and not just the big 6.

Thank you.

[The statement follows:]

STATEMENT OF MORRISON STEVENS, PRESIDENT, STEVENS VAN LINES, INC.

Mr. Chairman and members of the Committee I wish to thank you for this opportunity to appear today, concerning the policy of major van lines relating to firms which function as carriers in their own right and also act as agents for such major van lines.

I subscribe to the concerns expressed to this Committee by the Rothery and Dobson companies. In my opinion, those statements lay out a major problem which faces hundreds of smaller carriers in the United States. If the Commission allows the course of conduct which Atlas and North American Van Lines have proposed to follow, such smaller firms will encounter a severe competitive handicap.

In addition, I would like to bring to your attention some other restraints on competitiveness and efficiency created by the major van line with which Stevens is associated, United Van Lines.

Let me give you some background. Most regional carriers who are agents for major national van lines have enjoyed good relationships with major accounts in their city of domicile for many years, or even decades. Many of these major shippers are now, in the "deregulated" atmosphere, inclined to negotiate specific contractual arrangements for household goods and related transport. When they negotiate contract carriage, most of these major shippers specify that since their needs are of a 48 state nature they will deal only with a carrier having 48 state capability.

In the past, many of the smaller regional carriers have used their own more limited authorities to carry much of the traffic of these larger accounts. For much of the regional transport, the regional firm can provide more efficient service than can the major van line. However, if the major shipper signs a contract for 48 state service with a major national van line, the van line can then dictate that all the traffic move on the van line's bill of lading. This deprives the local or regional carrier of the use of its own authority in handling these shipments, and can deprive it of other services such as origin services and hauling. This denies the regional or local carrier of substantial revenues which it previously enjoyed.

Well, you might ask, why doesn't the local or regional carrier get its own 48 state authority? The carrier can, with some expense and time lag. But that doesn't solve the problem. The major van line can and does seek to discourage and limit the use of that authority, using both written and unwritten rules, or "policies".

You have heard that Atlas Van Lines has proposed that as of January first its carrier agents must transfer their authorities into different corporations, give Atlas the exclusive use of their historical market identities, and segregate the operations related to Atlas and the operations under their own authorities. As I read the Atlas list of requirements for agency relationship with it, the carrier agent's own authority would become unusable, and without substantial worth of competitive effect. Both North American and Mayflower have similar programs primed, awaiting a decision by the ICC or the courts on the Atlas program. Allied Van Lines has never allowed any firm affiliated with it to have its own authority or to participate on its own in contract carriage. United Van Lines has taken a different route in restricting use of carrier agent authorities, and that is the approach which I want to lay out for you.

I attach a copy of three "options" which United presents firms who have been affiliated with it as an agent. Each firm must select an option and be bound by its selection for a year. The language of these options is peculiar to the household goods sector, so I will summarize the United statement, and its practical effects, for you.

Each of the "options" governs, or restricts, the carrier agent's ability to get return hauls, and its ability to use its own equipment in moving goods within the United program. Under option 1, United in effect says that it will permit its various agents to cooperate with a carrier using its own (not United's) authority on movements of less than 750 miles, and will allow mixture of shipments for United's account and the local carrier's account on one truck in these shorter shipments, but not allow this cooperation on longer distance shipments. If the shipment is made for United's account, the local firm can use its own truck to move the shipment up to a distance of 1200 miles. And there is a limit on the number of trucks which the local firm puts in "permanent lease" use in hauling shipments within the system of agencies bound together by United—one truck for each $150,000 in annual "bookings" for United by that local firm. This link between trucks used and bookings puts pressure on the local firm which would like to participate in line haul operations to book shipments over United.

Under the second option, the local or regional firm announces that it is going to move shipments on its own authority up to 1500 miles (or further if it had more extensive authority in 1979), but United's various affiliated agents will not afford that firm any substantial assistance in booking backhauls for those truck movements. Also, there can be no mixing of shipments for the account of United and the local firm on the same truck. The local or regional firm can put as many trucks as it wants into long haul service within the network of firms affiliated with United, but only one truck for each $300,000 in billings for United.

Under the third option, the local or regional carrier declares that it will move goods on its own authority over 1500 miles, but United is not going to have its agency family cooperation in affording backhauls to that firm, there will be no commingling of United's shipments with that firm's on a truck, and the carrier can put only three tractor-trailer units in service in the network of agents.

We have elected to use option two. That is because we now have 12 tractor trailer units, with a gross value of about $600,000, in service within the United-administered agency network, generating about $1.6 million in annual revenue. It would hurt us quite a bit to yank nine of those units out of that system without finding equally efficient use for them.

Even though I have summarized these options, the practical effects may not be clear without a little more explanation. Getting backhauls is necessary to efficient operation. The effect of the United program is to enlist hundreds of the local moving firms associated with United in declaring to provide us with backhauls on longer distance shipments moved on our own authority. The effect of this is that when we try to make a contract with the major account with which we have been dealing for years, we can't offer that account 48-state service ourselves. Therefore the account has to be signed up in United's name. This means that though we have developed that account and performed much or most of the service for it over the years, in the future the account belongs to United, and we are locked out.

Using this approach, United hopes to control the highly desirable major account portion of the market, that portion gravitating to contract carriage, solely within its corporate structure, even though it owns no sales outlets itself, and all of its traffic has come from agents and carrier agents such as us in the past. The effect of this would be to ease the local and regional carriers out of the most desirable markets which we have developed over the years. This will further an evolution of the industry toward a few larger carriers having greater ability to control the market.

We are pleased that the Commission has opened a proceeding to determine whether it has jurisdiction to deal with some of the practices used by some of the

major van lines in their efforts to suppress the use of authorities owned by smaller carriers. But the conduct of that proceeding to date furnishes very little indication that the agency appreciates the importance or the urgency of the matter. And the Commission has not even begun to inquire into the sort of restraint which United has put into place. Frankly, while we do not wish to be critical of the Commission, we get the impression this Commission really does not understand the competitive mechanics between the larger and smaller carriers, including the ways in which a major van line can enlist a group of smaller household goods moving firms in a pattern of activity designed to suppress competition; or if it understands these matters does not have a grasp on how to prevent anticompetitive tactics such as these; or if it understands how to stop this sort of conduct just doesn't care to get involved.

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UNITED VAN LINES,
*September 20, 1982.*

To: All domestic agents.
From: Robert J. Baer.
Subject: Hauling option policy.

LADIES AND GENTLEMEN: Approximately one year ago, all United Van Lines, Inc. domestic agents were sent a bulletin outlining our hauling option policy. You were asked to complete and return to Headquarters the "Hauling Option Declaration" specifying the options which would govern the operation of the agencies under your ownership for the period commencing January 1, 1982, and continuing through December 31, 1982.

It is not time to submit your "Hauling Option Declaration" for the 12-month period beginning January 1, 1983, and ending December 31, 1983. I ask that you once again review the hauling options (see attached), and that you designate your choice for the calendar year commencing January 1, 1983, on the accompanying declaration form and return it to Ed Cody at UVL Headquarters no later than November 15, 1982.

The hauling option policies for Option I haulers are identical to last year. However, Options II and III have been changed to specify that non-shareholder agents choosing Option II or Option III will be assessed a 3% service charge for all shipments registered beginning January 1, 1983. More detailed information is available in Operations Bulletin 26-82. Once you have declared a particular option for the 1983 calendar year, you may not change it until you are again asked to submit a declaration.

If you have any questions about the hauling options or your Hauling Option Declaration, please contact your Area Supervisor or any member of the Operations Management Team.

Many thanks in advance for your prompt attention to this important request.

Sincerely,

ROBERT J. BAER.

Attachments.

OPTION 1

An agent may declare that he plans to haul shipments on his own authority up to a maximum of 750 line-haul miles.

When operating on his own authority:

He will be eligible for United return tonnage according to availability and will be entitled to interline at origin.

When operating on United authority:

Shareholder self-haul requests of up to 1,200 miles will be honored, and United will provide assistance in loading the van.

Non-shareholder self-haul requests of up to 1,200 miles will be favorably considered, depending upon tonnage availability, and United will provide assistance in loading the van.

Shareholders, in addition to the three permanent lease vans to which their stock entitles them, will be able to retain additional permanent lease vans in accordance with the prescribed booking formula.

COMMENTS

Under this option, an agent may use authority he presently holds or acquire new authority which he could utilize up to 750 line-haul miles, according to his individu-

al operating needs. He would be eligible for assignments on United authority to the full extent of United's present hauling policies, including interline at origin.

EXAMPLES

An agent could haul on his own authority any shipment up to 750 line-haul miles—and Dispatch could assign additional outbound tonnage up to 750 line-haul miles through master leasing counseling.

An agent could haul on his own authority any shipment up to 750 line-haul miles and receive return tonnage assignments from UVL Dispatch.

OPTION 2

An agent may declare that he plans to haul shipments on his own authority up to a maximum of 1,500 line-haul miles. Or, if the agent was a United agent as of February 24, 1981, and held authority in excess of 1,500 miles approved by the I.C.C. prior to March 1, 1979, the 1,500-mile limit is extended to the limits of that authority.

When operating on his own authority:

Except in extreme emergency situations, no United return tonnage will be assigned, and there will be no interline at origin.

When operating on United authority:

Shareholder self-haul requests of up to 1,200 miles will be honored, and United will provide assistance in loading the van.

Non-shareholder self-haul requests of up to 1,200 miles will be favorably considered, depending upon tonnage availability, and United will provide assistance in loading the van.

Shareholders, in addition to the three permanent lease vans to which their stock entitles them, will be able to retain additional permanent lease vans in accordance with two times the prescribed booking formula.

Non-shareholders will be assessed a 3% service charge on shipments booked with UVL.

COMMENTS

Under this option, an agent may, on his own paper, haul shipments up to 1,500 line-haul miles, utilizing authority obtained at any point in time. Shipments of more than 1,500 line-haul miles may be handled on the agent's own paper only under authority which he had obtained prior to March 1, 1979. Shareholders and non-shareholder may request self-haul up to 1,200 miles.

EXAMPLES

An agent could haul on his own authority a shipment up to 1,500 line-haul miles but would receive return tonnage only if no other equipment was available to handle it.

An agent could haul on his own authority a shipment up to 1,500 line-haul miles but could not participate in interline at origin unless no other van was available to handle the shipments in question.

A shareholder may retain all permanent lease vehicles now committed to United, provided the shareholder's booking volume develops double the booking volume needed to support each permanent lease van in excess of the first three.

OPTION 3

An agent may declare that he plans to haul shipments on his own authority in excess of 1,500 line-haul miles and in excess of the limits of authority which he held prior to March 1, 1979.

When operating on his own authority:

Except in emergency situations, no United return tonnage will be assigned, and there will be no interline at origin.

When operating on United authority:

Shareholders and non-shareholders will be assigned tonnage by United traveling no more than 300 line-haul miles, except in extreme emergency situations.

Shareholders will be eligible only for the three permanent lease vans to which their stock entitles them.

Non-shareholders will be assessed a 3% service charge on shipments booked with UVL.

COMMENTS

Under this option, an agent may acquire and use authority on an unlimited basis for shipments traveling on his own paper—but he will not be assigned United tonnage traveling more then 300 line-haul miles.

EXAMPLES

A shareholder or non-shareholder agent could not request any self-haul in excess of 300 line-haul miles.

UVL Dispatch will not assign any shipments for return tonnage unless there is no other van available to handle such tonnage.

A shareholder who presently has more than three permanent lease vans committed to United would lose all permanent lease vans in excess of three.

The agent would not be authorized to participate in interline at origin unless there is no other van available to handle the shipments in question.

HAULING OPTION DECLARATION

I have fully reviewed the Hauling Options contained in Executive Bulletin 3-82 dated September 20, 1982. For the 12-month period commencing January 1, 1983, and continuing through December 31, 1983, the operations of the agencies under my ownership listed below will be governed by Authority Option ———. I understand that commonly owned agencies must all be governed by the same option and that, once my declaration is submitted, I may not change options until the next declaration period.

I understand that I will be required to specify continuation of the option I have chosen or to select another option for the 12 months commencing January 1 of each subsequent year.

———————— for the following agencies:

(Signature here)

Agency name ——— and agency No. ———.

(Date signed here.)

Please send completed declarations to Ed Cody at UVL Headquarters.

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STATEMENT OF DAVID BENNETT, PRESIDENT, DOBSON CARTAGE & STORAGE CO.

I am David Bennett, President of Dobson Cartage & Storage Company, of Auburn, Michigan. I very much appreciate this Committee allowing me and a few other carrier agents to appear before you, to tell you about how threats to the competitive development of smaller household trucking companies have been allowed to arise, without any check by the Interstate Commerce Commission, contrary to what we have believed was the intent of the Household Goods Act of 1980.

Let me tell you a little about the Dobson company. We have been in businsss for decades. We have built up a substantial business reputation in Michigan. Over 78 percent of our traffic is "national account" traffic. We have several locations. We have a fleet of over 50 tractor trailers. For years, when affiliated with Atlas Van Lines, we not only "booked" large amounts of traffic for the Atlas system—we were one of the largest revenue generating agents for Atlas—we provided the equipment used to haul even larger quantities of the freight moving between the firms affiliated with that system. And this was all additional to moving freight on our own operating authority.

We had prospered in the dual role of agent for Atlas and carrier in our own right. By owning, and operating efficiently, substantial equipment, we had given the system of companies associated with Atlas substantial over the road carrying capacity as to traffic moving on Atlas's bills of lading, had been able to handle efficiently traffic moving under our own authority (very often, but not always, traffic moving relatively short distances, in which Atlas often had no great interest), and had been able to generate and maintain goodwill with many commercial shipping accounts who had learned that they could depend on us to get their goods moved in a timely fashion, on either Atlas's account or our own account. We believed this method of operation had been highly beneficial to the Atlas system as well as our own company. As I indicated, we furnished that system considerable load-carrying capacity, and we offered it business generating revenues of several millions of dollars per year.

Notwithstanding all this, in the late 1970's we saw the development of a complex, or neurosis, within the Atlas management: almost paranoic fear that after the 1980 Motor Carrier Act we and other firms would somehow forsake and devour Atlas. We

had no intention of doing so. We were making money for ourselves and Atlas. But the Atlas management instituted one ploy after another obviously designed to penalize firms such as ours for using their own authorities. Up until 1982, we found that the Interstate Commerce Commission seemed to have a good grasp of what Atlas' management was about. On one occasion, in 1981, the Commission sued Atlas to restrain a blatantly anticompetitive attempt to enlist its various agents in refusals to provide backhauls for a firm such as ours when we were using our own authority.

I will not repeat the information which Mr. Terry has given you on the Atlas program begun in 1982, and the "carrier agent" resistance to that program. Instead, I will add to his statement information on Dobson's reaction. We resisted the program vigorously, at first from within the Atlas family. We were among the 28 firms filing pleadings with the ICC concerning this program, and have remained active in that proceeding, until it is brought to a reasonable conclusion.

But we also changed our agency affiliation. We affiliated with another major van line, Mayflower. I do not want to detail the intimate particulars of our agreement with Mayflower, but I will reflect to you that the arrangement made it possible to shift affiliations, in the short term, without excessive immediate penalties, and with continued ability to use our own operating authority, for a period of time.

If this is so, why are we continuing to be active in the ICC proceeding, and why do we submit this testimony to Congress?

I know that if neither the Interstate Commerce Commission nor the courts clearly prohibit the type of program initiated by Atlas, it will spread very quickly to the other major van lines. If that were to occur, when facing decisions concerning agency affiliation a few years from now, we would very likely encounter a world in which all the majors had policies which restricted the ability to use one's own authority in an efficient and flexible way. A firm such as ours would have very few alternatives for participation in the national household goods moving market, other than submission to domination by the favored few major van lines. I do not want to see that sort of future come to pass. I know it would disadvantage the firm which I serve as President. I believe it would prejudice the household goods moving public, in that many firms such as ours would lose operating efficiency and flexibility, and the entire market would lose much of the potential for competition at the national level which is latent in the group of regional and smaller interstate carriers. I believe and hope that Congress did not want this sort of market to grow out of its 1980 legislation. There is no need for that sort of market to be forced upon the people in the household goods moving business or on the public. Attempts by larger carriers to force this sort of market evolution could not be maintained if restrained by antitrust litigation or by Commission action pursuant to the authority which you gave it in Section 11342 of the Household Goods Act. I hope the Commission will face up to a responsibility to prevent combinations among carriers subject to its jursidiction having the intent and effect of restraining competition. At the least, the members of the national legislature should be aware that the practical effect of your mandate to foster competition in the household goods sector is now at issue at the Commission, and it is very important that that agency demonstrate a good comprehension of the industry situation and the means of encouraging open and fair competition among household goods carriers.

Senator DANFORTH. I am not an expert in your area, but I would like you to explain to me in terms that I can understand how you have been operating in the past, and what change is being made by Atlas or anybody else who is following suit.

Right now, as I understand it, we have these very large van lines, Atlas, Mayflower, or whatever. If I want to move from Washington to Rolla, I call up a van line that I get out of the Yellow Pages. I find Allied Van Lines in the Yellow Pages, for example, and I get the phone number. This, in fact, is an agent; is that correct?

Mr. STEVENS. That is correct.

Senator DANFORTH. So I call the agent and I say, "Will you please move me from here to Rolla?" They say, "Fine," and we make a deal. They come in to get my stuff and move it. How is this new system differing from the old one?

Mr. STEVENS. First going back to the old system, all moving companies like my family company—I am fourth generation—or Mr. Terry's company, there was a need after the industry started to grow for a network of reliable agents. For instance, I am a Michigan-based carrier agent. If I book a shipment in Michigan for General Motors, which has plants all over the country, General Motors may give this shipment to me because I am in Michigan, but the shipment may be moving from Los Angeles to Atlanta.

I need a reliable representative in Los Angeles, that I can call without question, to handle the origin services, which is packing and preparing the shipment for movement. I, likewise, need a reliable hauler, that I know has met certain minimum criteria in the industry, to haul that shipment from Los Angeles to Atlanta.

The truck normally is not owned by the van line. It may be Mr. Terry's truck which happens to be empty in Los Angeles that may want a backhaul out of the California area, and it accepts the shipment from the agent in California and hauls it to Atlanta. In Atlanta, it may go into storage, therefore, you need another reliable agent there that is affiliated with the same network.

The business has always been somewhat of a brokerage type business. Very few companies handle a shipment completely from beginning to end on a consistent basis. Myself, I have authority in 47 States, and I handle probably half of the interstate shipments to conclusion. So if you were to call me from the Yellow Pages, I would pack the shipment, I would load the shipment on my own truck, and I would deliver it.

I also have the option to utilize United Van Lines, because I am a United Van Lines agent. If I cannot service it on my own equipment with my own authority, I call United Van Lines and place the shipment with them, knowing in confidence that it is going to be handled in a quality manner because of the United system that has been established which I am a part of.

Senator DANFORTH. How do they want to change that?

Mr. STEVENS. When the Deregulation Act of 1980 was implemented, it was to foster flexibility in pricing, and flexibility in entry, primarily. The entry has not been a problem because there is really no practical way that the carriers can prevent new entries under the current legislation.

Where they have attacked it, and where it has become a problem, is where they have established internal policies, and I am talking primarily of United Van Lines now, where they are saying that we cannot use authority that we may have obtained through the Commission through proper methods that is dated after March 1, 1979. They chose that date only to have a beginning point, and they felt that this was when deregulation basically started and authorities became easier to get.

At that point in time, my company only had 37 States. We took advantage of the Deregulation Act, and we extended that to 47 States. Through their policies, they came out with a restriction that says I cannot haul beyond a certain line-haul mileage or beyond authority that existed after March 1, 1979. Since I added those 10 States after March 1, 1979, and they are primarily Western States which are beyond 1,500 miles, it means that they are States that I cannot utilize.

Likewise, with contract carriage, that is where you go in and negotiate a commitment from a shipper, let's say, General Motors, and they commit to provide to us 100 to 200 shipments a year for a discounted price. You enter into a bilateral contract. Since I have these restrictions that United imposes on us beyond 1,500 miles, I cannot service the west coast under that contract.

Therefore, I am forced to place that traffic in United Van Line service. Therefore, I am precluded from basically negotiating in my own name a customer who has been a customer of my family's company since the inception of General Motors and precluded for handling that business.

Senator DANFORTH. The line itself is exercising more restrictions on where you can go, is that right?

Mr. STEVENS. That is correct.

Senator DANFORTH. Is that the sum of it?

Mr. STEVENS. That is correct, they are circumventing the intent of the deregulated environment. If I can't use the authority I got from the Commission, I can't sell services relative to that authority.

Senator DANFORTH. They are allocating territory, is that right?

Mr. STEVENS. That is exactly right.

Senator DANFORTH. What is United anyhow? Is United just a publicly held corporation?

Mr. STEVENS. Of the big six, there are different ownership situations. United happens to be owned by 130 agents that formed the company back in the late 1940's for a return load bureau. It was basically founded by carrier agents like myself, located all around the country, who needed a central clearinghouse to handle the payment to each of us.

Senator DANFORTH. United is owned by its agents?

Mr. STEVENS. It is owned by 130 of 700 agents. They have 700 agents, but only 130 of them are stockholders.

Senator DANFORTH. What about the other lines, are they owned by agents, too?

Mr. STEVENS. Allied Van Lines is owned by agents. Atlas used to be owned by agents, and was of a similar legal structure to United. A year ago, it went public, and it is now a publicly traded company. Pepsico, a company listed on the New York Stock Exchange, owns North American. Global is owned by a single individual. American Red Ball is owned by a single individual. Of the other major companies, Mayflower is publicly traded, I think, over the counter. So there are different ownership structures of the big six. The Bekins Co., the other big six carrier, is also traded publicly.

Senator DANFORTH. With respect to United which is owned by 130 agents, if the agents are up in arms, why can't they change the policy?

Mr. STEVENS. Not all agents are up in arms because not all agents are carrier agents anymore. Some of the agents do not have authority, and they never did have.

Senator DANFORTH. So they couldn't care one way or another.

Mr. STEVENS. They could not care one way or the other.

Senator DANFORTH. So the only agents who do care would be the ones who should be up in arms, it would seem.

Mr. STEVENS. That is correct, and there are a number that are up in arms.

Senator DANFORTH. Would it change the policy for United if the only agents who care about it are dead set against it? It would seem to me that the management would be on little shaky ground under those circumstances.

Mr. STEVENS. You have two different groups in United Van Lines. One is the board of directors, and the other is management. Management is professionally hired to run the company and it does not own any of the company. The board of directors is composed of 18 stockholder agents of the 130, who may be carriers in their own right or may not be. It is not a criterion, only that you be a stockholder.

Senator DANFORTH. Stockholders elect the board of directors, and the board of directors selects the officers.

Mr. STEVENS. That is correct.

Senator DANFORTH. Why can't you cashier them if they are not doing the right thing?

Mr. STEVENS. We are having a hard time getting a majority vote to do that.

Senator DANFORTH. Why should Congress do something, or the ICC? Am I wrong that it should be a matter of internal business practice?

Mr. STEVENS. In my opinion, I think not, because the intent of the act was to allow for flexible pricing and for easier entry. I went to the ICC, proved my case, and got additional authority, and now I can't use it because of an internal policy which in my opinion is a violation of the law.

Mr. TERRY. If I may, in the Atlas situation, just to carry on, Atlas was formed in the late 1940's by 33 carrier/agents. They were a group of independent businessmen around the country who had operating authority under the Grandfather Act. They formed the company and they created what we have today, a company of about 400-odd agents, some carriers with certificates and some without.

The Atlas change now is such that they want the carrier/agents to relinquish their market name. My market name has been in the northwest suburban Chicago area for almost 70 years now.

They are saying:

> You give us the name of Rothery, it is a good, old established name. If you want to maintain your authority, and if you want to operate on your authority, and do whatever you want to do on your authority, put it in the name of XYZ Moving and Storage Co. Go remarket a new company because we want your good name, or we won't let you use your authority.

I don't think that this is the intent of the act. I think the act was to increase competition.

Senator DANFORTH. Excuse me, but is your problem the same as Mr. Stevens', basically an allocation of territory?

Mr. TERRY. Ours is not territorial. I think each of the van lines is handling it a little differently.

Senator DANFORTH. But they are telling you that there is certain business that you would like to do that you can't do; is that correct?

Mr. TERRY. That you cannot use your authority, therefore, they are stifling competition.

Senator DANFORTH. Yes.

Mr. TERRY. It was the intent of the act to increase competition. It is just 180 degrees the wrong way.

Senator DANFORTH. You have initiated a proceeding at the ICC on this, have you?

Mr. TERRY. Yes. We have not had a response, but we have initiated a proceeding. It was done in June. It took about three months to just get word from the ICC that, well, maybe we will look into it now. Three months later, a financial docket was filed that they were going to look into the matter, and it was my interpretation that all things that were going on with these new policies and changes were supposed to be pretty much put on hold.

However, Atlas has continued to implement the new policy which even though we are under a pooling agreement that was approved by the Commission earlier this year, it doesn't match and they are going ahead with it. We asked the Commission to say something, "We told you to wait until we resolve it," but nothing comes from the Commission.

I understand that the Commission's door is open, I am just wondering if there is anybody in there.

Senator DANFORTH. What reason do they give for this new program; what is the purpose of it?

Mr. STEVENS. They are a publicly traded company. They operate under the great American standard of trying to increase the revenues, increase the profits at the bottom line. One way they can get more business is to take from the agent who has already got that business and operates it under his own authority.

All that will do is to force him, somehow, to convert that business to Atlas' paper or into the United mainstream, or to the North American mainstream. It is business that already exists and is being done by small businessmen like ourselves, and it is easy for them to get if they can promulgate policies to control that traffic.

You are talking about companies that are multimillion dollar companies, doing hundreds of millions of dollars worth of business. There are companies like us out there that make those companies possible, and we do hundreds of thousands of dollars worth of business. It is an awesome battle.

Mr. TERRY. The other side of it, I think, is that the van lines essentially perform a clearinghouse function in the moving industry. All equipment, all financed equipment, all warehouses, all large facilities, all the sales effort, for the most part, are completely and totally financed and managed by small people like ourselves.

All the tonnage that the van lines claim to generate comes from the smaller people. Now they are saying, give it all to us. You can't have any on your own, because we will make some money and you won't.

Senator DANFORTH. This matter that you initiated at the ICC, when was that done?

Mr. PIERCE. It was filed on May 19.

Senator DANFORTH. What is your guess as to why you have not heard from them?

Are they following the normal procedures at the ICC, or are they departing from the normal procedures at ICC? Are they stonewalling it? Are they out to lunch, or what?

Mr. PIERCE. It is a little risky to speculate, but I will try. I don't think they know their minds on it, that is just my guess. I think there are some at the Commission who have a very strong open-market inclination, and I personally have to agree with a lot of the open-market inclination in the deregulation bill. However, some may feel that you just take hands off and do not follow the ordinary antitrust standards, that is a guess.

Atlas did some homework in talking with some parts of the Commission before they began their policy, and there may be some elements on the Commission staff who just don't agree with the viewpoints advanced by this group.

They act as if they just don't want anything to do with it.

Senator DANFORTH. Do they have normal deadlines in their rules that they have to follow?

Mr. PIERCE. Not for this kind of proceeding.

Senator DANFORTH. So they could just go on forever. They could just say, "We have lost it in the mail," or something.

Mr. PIERCE. That is right.

Senator DANFORTH. Who is here from the ICC? Is there anyone here from the ICC?

Mr. ATHERTON. Yes, Mr. Chairman.

Senator DANFORTH. Can you enlighten us as to how this matter is proceeding?

Mr. ATHERTON. No, sir, I really can't. It is not in my end of the Commission, it is with the Office of Proceedings. I do know that it is an active proceeding, and a rather complicated one.

Senator DANFORTH. But there will be some resolution one way or another in this proceeding?

Mr. ATHERTON. Yes, sir.

Senator DANFORTH. It is not just going to sit on somebody's desk for a long period of time?

Mr. ATHERTON. No, sir, I hope not. You can be sure that I will find out.

Senator DANFORTH. Could you do that? Could the Commission notify the committee on this, not as to what you are going to decide, but just whether you intend to decide, and how it looks as far as the timetable?

Mr. ATHERTON. Yes, sir.

[The following information was subsequently received for the record:]

The *Atlas* case, F.D. No. 29972, Declaratory Order—The Applicability of 49 U.S.C. 11342 to Agreements Between Household Goods Carriers and Noncarrier Agents, is being expedited by the Commission. A final decision is anticipated by mid-February 1983.

Senator DANFORTH. Thank you, sir. Does that help?

Mr. PIERCE. Yes, it helps.

Mr. TERRY. I hope that it is in my lifetime.

Senator DANFORTH. Pardon?

Mr. TERRY. I hope that it is in my lifetime.

Senator DANFORTH. Will it be in Mr. Terry's lifetime?

Mr. ATHERTON. Yes, sir.

Senator DANFORTH. Thank you, gentlemen.
[Whereupon, at 12:20 p.m., the subcommittee adjourned.]